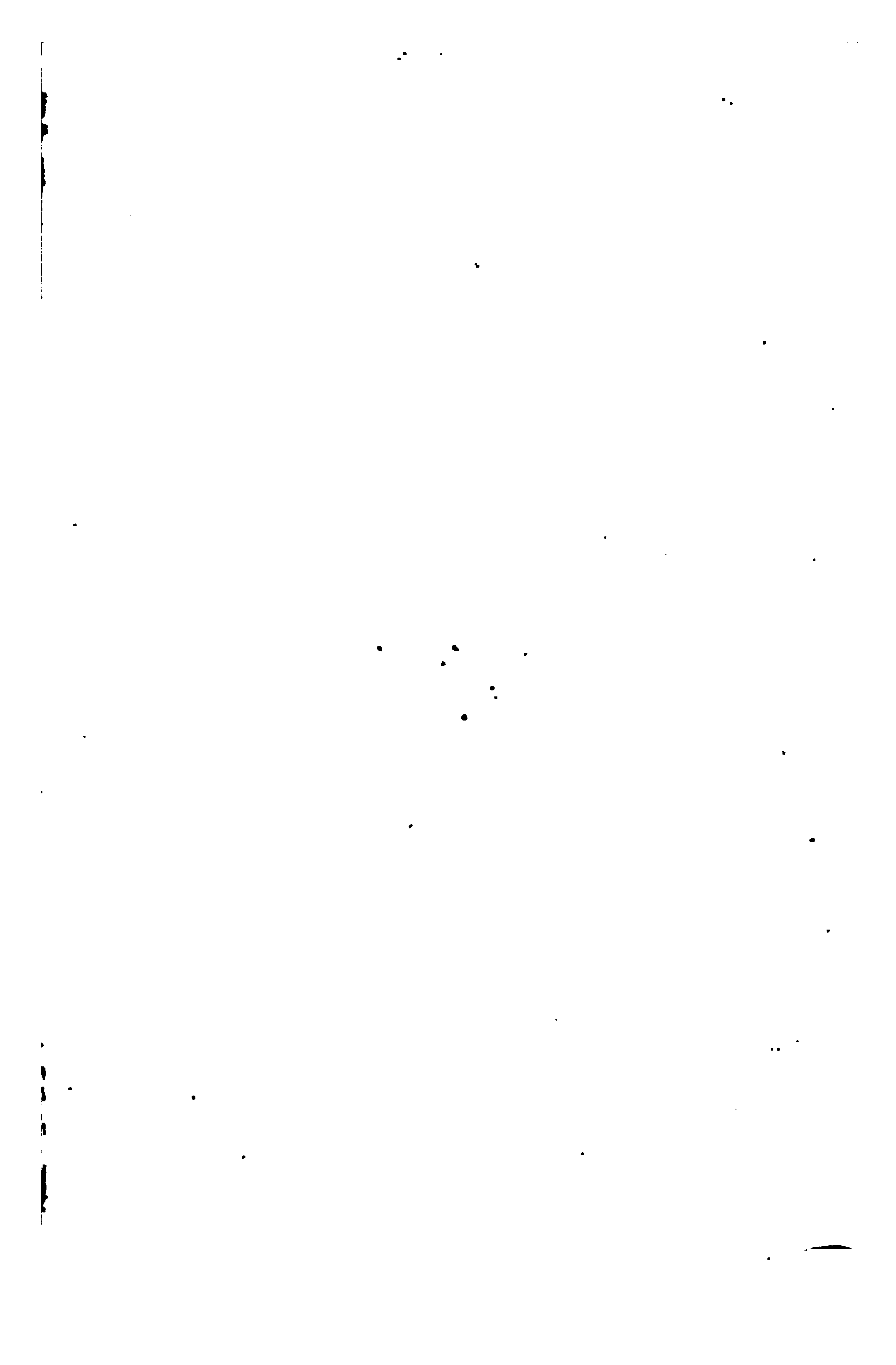






A MANUAL

OF

THE LAND REVENUE SYSTEMS AND LAND TENURES

OF

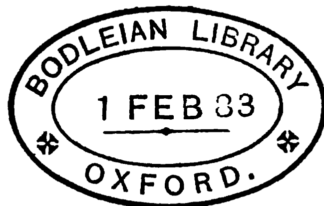
BRITISH INDIA.

(PRIMARILY INTENDED AS A TEXT-BOOK FOR THE USE OF OFFICERS OF THE FOREST SERVICE.)

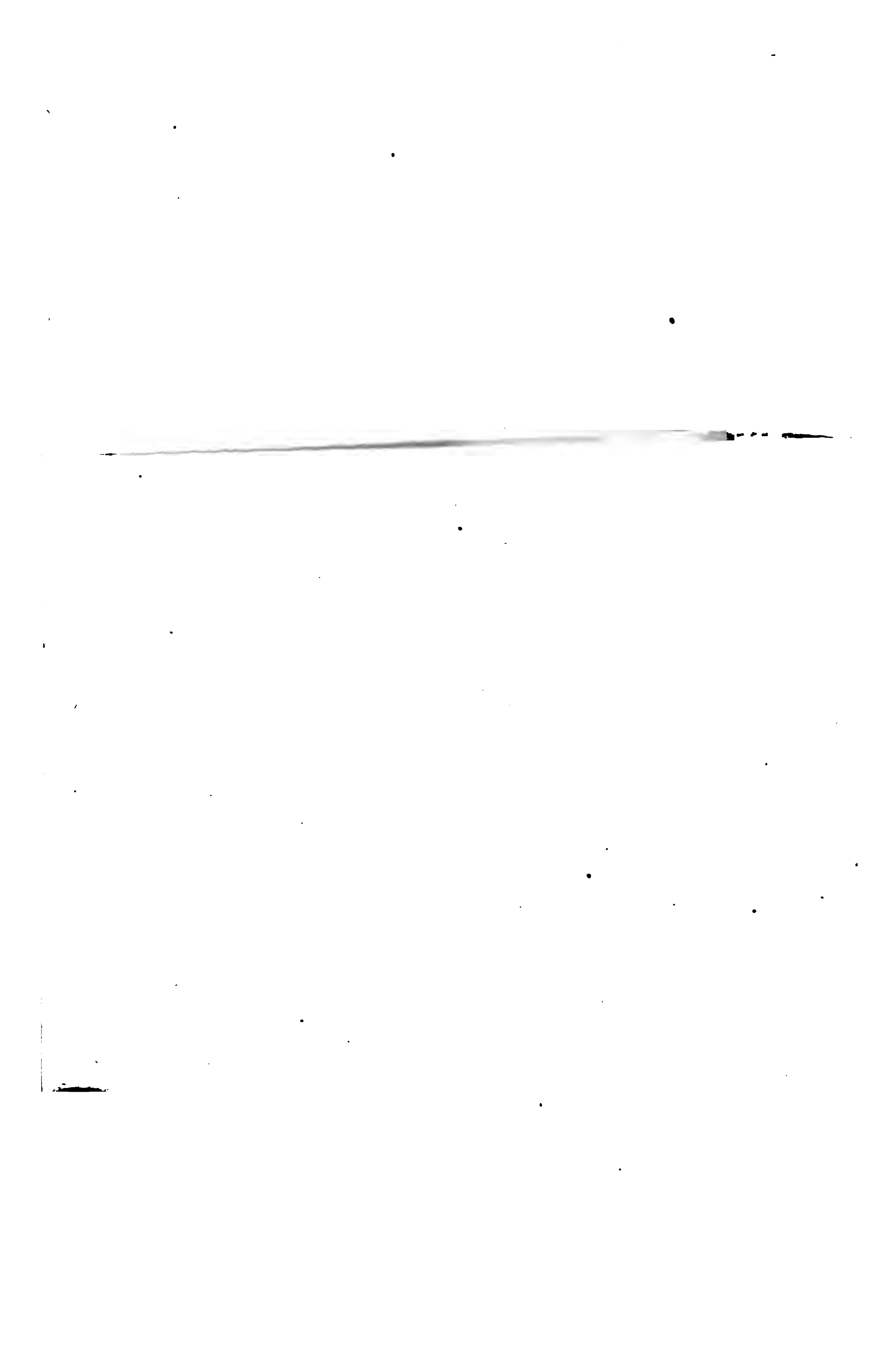
BY

B. H. BADEN-POWELL,

OF THE BENGAL CIVIL SERVICE.



CALCUTTA:
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1882.



PREFACE.

THE only need for a preface is to give me an opportunity of expressing my acknowledgments to those officers who have helped me in this work.

By the permission of the Government of India, I visited the head-quarters of the several Local Governments to collect the books, reports, and other documents necessary to compile this Manual.

When the results of my enquiry had been put together, I printed a rough draft of what I proposed to say regarding each province, and circulated this to various officers for criticism and advice.

The friendly reception I everywhere met with, the kindness and the patience with which officers in every province listened to my questions and gave me access to the information I required, the valuable notes which many of them afterwards furnished me on reading my first rough print,—these demand my warmest acknowledgments. Without this aid, the really great labour involved in the preparation of this Manual could never have been accomplished.

Where the assistance received was so general and so valuable, it is difficult to make mention of one

more than another among the helpers. But I ought specially to offer my thanks to the Hon. A. Rivers Thompson, C.S.I., C.I.E., C.S.; to the Hon. H. L. Dampier, C.I.E., C.S.; and Mr. H. J. S. Cotton, C.S., in Bengal; to Mr. H. S. Reid, C.S., Mr. Vincent A. Smith, C.S., Mr. R. S. Whiteway, C.S., Major G. E. Erskine, and Mr. W. C. Benett, C.S., in the North-Western Provinces and Oudh; to Mr. G. J. Nicholls, C.S., and Mr. J. W. Chisholm, in the Central Provinces; to Major E. G. Wace (Settlement Commissioner) and Mr. J. Wilson, C.S., in the Panjáb[1]; to Mr. Leslie S. Saunders, C.S., in Ajmer; to Mr. G. D. Burgess, C.S., in British Burma; to Mr. W. B. Jones, C.S., the Commissioner of Berár; and to Mr. A. J. Dunlop, Assistant Commissioner of Akola; to Mr. H. A. Acworth, C.S., Acting Under Secretary to the Government, and Colonel the Hon. W. C. Anderson, C.S.I. (late Settlement Commissioner), in Bombay; and to Mr. C. J. Lyall, C.I.E., C.S., in Assam.

B. H. BADEN-POWELL.

LAHORE;
March 1, 1882.

[1] I would also desire to record my indebtedness to Mr. C. L. Tupper's book on the Customary Law of the Panjáb. Not only is this work replete with judiciously selected evidence regarding land tenures, but the different portions of the collection are prefaced by original essays regarding the history and development of the land tenures and the history of communities, which will give the book an honourable position not only among works of local interest, but of those which contribute to the general understanding of the early history of institutions.

CONTENTS.

BOOK IV.—THE RAIYATWÁRÍ SYSTEM.

BOOK V.—MISCELLANEOUS SYSTEMS.

NOTE.

VERNACULAR terms (including the names of places) are represented, wherever possible, by simple *transliteration*, except in cases where the term has become practically Anglicised.

Transliteration gives the student an immediate clue to the actual vernacular term, and that is the really important thing. The pronunciation will usually be known to him. Where this is not the case, I may briefly indicate that all accented vowels, á, í, ú, are pronounced in the continental fashion (as *lago, vino, puro,* in Italian); "e" is always as 'ay' in *day*; "y" is always a consonant; "o" is always long as in "depôt" (never short as in "potter").

As for the unaccented vowels,—

'a' is always as 'a' in *organ*.
'i' ——————— 'i' in *pit*.
'u' ——————— 'u' in *pull*.

As a rule, typographical difficulties prevented my using diacritical points to distinguish the consonants; I have, however, indicated the ع by an apostrophe (as in 'arzí), and the ق is distinguished from the ک by use of the letter *q* alone.

This is of course only a rough account of the matter, but it will save an English reader from absolutely mispronouncing the words. The only terms that *ought* to have been transliterated, and are not uniformly so, are words from Madras and British Burma. The former I have transliterated, wherever I could, on the authority of *Wilson's Glossary*; for the latter no system of transliteration has yet been adopted. In two instances I have adopted a modified spelling, because the words occur repeatedly and the accentuation is typographically troublesome: I have written "raiyat" and "taluqdár," though *correctly* these words should be "ra'íyat" and "ta'alluqdár."

B. H. B.-P.



INTRODUCTION

EXPLAINING THE OBJECT OF THIS MANUAL.

It is necessary to render a brief account of this Manual;—how it came into existence, and what object it aims at fulfilling.

It had long been desired that Forest Officers should become better acquainted with the land and revenue systems of the country. But the conditions of a forester's life, especially as regards facilities for reference to books, require that any subject to be studied should be available in a handy, or at least in a manageable, volume.

Unfortunately such a Manual has not hitherto existed. There is no account of the land and revenue systems sufficiently succinct to be contained in one volume of a size which is not forbidding, or sufficiently precise to be a text-book for study. I have found nothing between the brief and general accounts contained in Campbell's *Modern India* or Chesney's *Indian Polity* on the one hand, and the detailed "Revenue Manuals," Volumes of Circulars, and Codes of Acts and Regulations of each province, on the other; able as the former are, they are not sufficient for the purpose; the latter are costly and more or less inaccessible.

It was therefore necessary to prepare a Manual which would answer the conditions required; would be in reasonable compass, and yet would go into sufficient detail to enable an officer to know how to act in a matter of revenue law, when in the course of his official duty it was necessary to do so. This latter requirement I have endeavoured specially to meet, by abundant references in the footnotes, to the Acts and other sources from which more detailed information can be obtained.

At the same time there was a strong inducement to undertake the task, in the fact that there are many others besides Forest Officers to whom such a work will probably prove acceptable.

Officers who have lately come to India to take part in its administration may desire to make a preliminary survey of the ground generally, before entering on a detailed study of their duties in the particular province to which they have been appointed. There are also many persons who now devote themselves to a study of the financial and economic welfare of India; these are especially in want of an easy means of studying the land and revenue systems. Indeed, the reasons why a study of this system is so necessary to all who would help forward the progress of India, are also to a great extent the reasons why Forest Officers should understand them.

The first of these reasons will only be fully appreciated when some progress has been made in the examination of the systems themselves. Here I must ask the student to take it on my statement, that the land revenue system is so bound up with the whole administration of Government, that a general idea of it, is, if not absolutely necessary, still highly desirable for an officer of almost any department, who wishes to take his place intelligently as a member of the composite body of officials jointly engaged in the administration of the country and the promotion of its prosperity.

With a Forest Officer it is especially so; the estates he has charge of supply the wants of the people, and are more or less connected (through the exercise of forest rights and privileges) with their daily life. To administer such estates efficiently, a perfectly cordial relation between the District Officers and those in charge of the forest estates must be maintained. Nothing is more detrimental to the best interest of the forest administration, than a feeling that the Forest Officer is a person who is for ever trying to press one class of rights, while the District Officer is occupied in restraining him by putting forward antagonistic rights of another class.

Forests exist for the public good, and for that good individuals must submit to a limited amount of interference with rights or privileges which, if unrestricted, would result in waste. To effect

this without undue oppression, requires the co-operation of both classes of officers; each must understand and appreciate the point of view of the other. Officers engaged in the revenue administration of a district would no doubt welcome the means of understanding more systematically, the importance of forests and their place in the economy of nature. This want, it is hoped, may, before long, be supplied[1]. But, on the other hand, to enable Forest Officers to understand the point of view of the District Officer, and to afford him the means of taking up a secure position in his work of administration, there cannot be a better preparation than a study of the land revenue systems of India.

The second reason is a more special one.

Forest estates are nearly always constituted out of waste land at the disposal of the State, which has been excluded by the land revenue settlement arrangements from the area of the village lands or estate dealt with. Hence boundary questions depend in many cases on revenue records and settlement maps; and the Forest Officer is brought into contact with "patwáris," "karnams," headmen, and others, whose functions can only be understood with reference to the land revenue law of their district. He has also to refer to "records of rights," village maps, "khasras," "field registers," and so forth, all of which are the result of revenue settlement operations.

It will thus, I think, be clear that a study of the subjects comprised in this Manual has a very practical importance to the Forest Officer, apart from that more general importance to which I first alluded.

How far the method in which the Manual has been prepared, will adapt it to fulfil the requirements of study, can only be seen when the work has been in the hands of Forest Officers and the

[1] What is wanted is a popular but accurate book of small size, on the model of the French book (which I can cordially recommend to the perusal of all classes; it can be ordered anywhere, and costs 2 francs), "Jules Clavé:—Études sur l'économie forestière" (Guillaumin et Cie.: Paris, 14 Rue Richelieu).

public generally for some little time. That my book must contain some errors, and still more omissions, I feel certain; but the reader will be disposed to regard such defects with indulgence, when he recollects the wide scope of the work, and the limited time at my disposal for its preparation. I hope also that the references in the footnotes will often supply the means of correcting or obviating to some extent the defects of the text.

B. H. BADEN-POWELL.

LAHORE.

BOOK I.

A GENERAL VIEW OF THE PROVINCES OF BRITISH INDIA; THEIR REVENUE ADMINISTRATION AND TENURES.



LAND REVENUE SYSTEMS

AND

LAND TENURES

OF

BRITISH INDIA.

CHAPTER I.

OF THE PROVINCES UNDER THE GOVERNMENT OF INDIA, AND HOW THEY WERE CREATED.

§ 1.—*Introductory.*

As this Manual is devoted to the consideration of the Land Tenures and Revenue Systems which distinguish the different provinces of India, it will be well to understand how these provinces came into separate existence for the purposes of administrative government. The limits of my work, however, preclude me from entering on anything like a historical sketch of the progress of those great and unforeseen events which led to so vast a territory being brought under British rule: for such information the standard Histories of India must be consulted. I must plunge at once *in medias res,* only pausing briefly to remind the reader that the history of the British rule in India is the history of a trading Company, which in the course of events, became a governing power, and which ultimately, being dethroned by the Supreme Legislature in 1858, left the huge fabric of its dominion to be administered by the Crown.

§ 2.—*The Presidencies.*

So long as the East India Company [1] was, as a body, chiefly concerned with trade, the charters granted to it by the Crown (from the first memorable grant of December 31st, A. D. 1600, onwards) related, as might be expected, chiefly to trading interests.

The first settlements,—at Surát (A. D. 1613), on the Coromandel Coast, at Fort St. George (A. D. 1640), and at Fort William in Bengal (A. D. 1698), were mere "factories" for trading purposes [2]. These factories then became "settlements," which were governed internally each by a "President and Board." In the course of time, out-stations or dependent factories grew up under the shelter of the parent, and then the original factory was spoken of as the "Presidency town," or centre of the territory where the President resided. In this way, what we now call "the three Presidencies [3]," Bengal, Madras, and Bombay, came into existence.

In 1773, the government of the Presidency of Fort William was entrusted to a Governor General and Council, who had a certain control over the other Presidencies. This was provided by the Act (13 Geo. III, Cap. 63) known as the "Regulating Act."

[1] The title "East India Company" originated with the Act of Parliament 3 and 4 Wm. IV, Cap. 85 (A. D. 1833). Section 111 says that the Company may be described as the "East India Company." At first the Company was called "the Governor and Company of Merchants trading to the East Indies." Then a rival Company was formed, called "the English Company trading to the East Indies." These two Companies were afterwards united, and, by the Act of Queen Anne (6 Anne, Cap. 17, Sec. 13), the style became "the United Company of Merchants of England trading to the East Indies." Last of all, the Act of William IV, first quoted, legalised the formal use of the designation ever since in use. It is, however, frequently used in the titles of Statutes prior to this, *e. g.*, 9 Anne, Cap. 7; 10 Geo. III, Cap. 47; 13 Geo. III, Cap. 63.

[2] And, indeed, they were not "possessions," but the traders were the tenants of the Mughal Emperor. The first actual possession was the Island of Bombay, ceded by Portugal, in 1661, to Charles II, as part of the marriage dowry of the Infanta. This island was granted to the Company in 1669.

[3] The use of this term has never, even in Acts of Parliament, been precise: sometimes it is meant to signify the *form* of Government, sometimes the *place* which was the seat of that Government; at other times it meant the *territories* under such Government.

It was not till twenty years after (33 Geo. III, Cap. 52) that the government of Bombay and Madras, respectively, was formally vested in a Governor with three Councillors[4].

These territorial divisions of India, called Presidencies, could not be authoritatively defined from the first; they gradually grew up under the effect of circumstances.

Territories that were conquered or ceded to the Company, were, naturally enough, in the first instance attached to the Presidency whose forces had subdued them, or whose Government had negociated their cession. Thus, for instance, Bengal, Bihár, and Orissa, went to Fort William; the territory acquired from the Nawáb of the Carnatic, to Fort St. George; and the territories taken in 1818 from the Peshwá Bájí Ráo, to Bombay; and so on.

No one could foresee what course events would take; and when it is recollected under what very different circumstances, at what different dates, and under what unexpected conditions, province after province was added to the government of the Company, it is not surprising that the Legislature should not, *ab initio*, have hit upon a convenient and uniform procedure, which would enable all acquisitions of territory to be added on to one or other of the existing centres of Government, in a systematic manner. The student will not therefore be surprised to find that the legislative provisions for the formation and government of the provinces of India are not contained in one law, but were developed gradually by successive Acts, each of which corrected the errors, or enlarged the provisions, of the former ones.

§ 3.—*Method of dealing with new territories.*

Until quite a late date (as will be seen hereafter) no Statute gave any power to provide for any new territory, otherwise than by attaching it to one or other of the three historical Presidencies. But as a matter of fact, large areas of country, when conquered or

[4] The term "*Governor* or President," however, begins to appear before that; *e.g.*, in section 39 of the Regulating Act itself; and in 26 Geo. III, Cap. 57.

ceded to the British by treaty, were not definitely attached to any Presidency; at any rate, it was doubtful whether they were intended to be so or not. This was especially the case with the Bengal Presidency; it became in fact, difficult to say with precision, what were the exact limits of that Presidency, or whether such and such a district was in it or not; and that afterwards gave rise to questions as to whether particular laws were in force or not.

The Act 39 and 40 Geo. III, Cap. 79 (A. D. 1800), was the first distinctly to empower [5] the Court of Directors in England, to determine what places should be subject to either Presidency, and set the example by declaring the districts forming the province of Benares (ceded in 1775) to be formally "annexed" to the Bengal Presidency.

After this, nothing of importance on the subject of territorial division appears till the year 1833, when the 3 and 4 Wm. IV, Cap. 85, was passed.

By this time the Presidencies of Madras and Bombay had nearly reached the limits which they afterwards retained, and these were territorially convenient; but the remaining Presidency of Bengal had attained most unwieldy dimensions. Not only had Cuttack (Katák) been added to Orissa (thus bringing up the frontier of Bengal to that of Madras), and the large provinces of Assam, Arracan, and Tenasserim been acquired as the result of the first Burmese War in 1824, but most of what we now call the North-West Provinces [6], had been also annexed to it. The Act of 1833

[5] There are Acts of 1773 and 1793 which make allusion to the subject, but the Act of 1800 is the first which directly deals with it.

[6] These large additions in the north-west (besides the Benares Kingdom above alluded to) consisted of the districts ceded in 1801 by the Nawáb of Oudh, and comprised the country now known as the districts of Allahabad, Fatihpur, Cawnpore, part of Azimgarh, Gorakhpur, Bareli, Murádábád, Bijnaur, Badáon, and Shahjahánpur. Soon after, a subordinate of the Nawáb's ceded Farukhábád; and not long after followed the districts ceded at the close of the Maráthá War (which began in 1803): these were Etáwa, Mainpúri, Aligarh, Bulandshahr, Meerut, Muzaffarnagar, Sahápanpur, Agra, Mathurá, and Delhi (the latter including all that is now under the Commissionerships of Delhi and Hissar); also Banda and parts of Bandelkhand.

therefore (section 38) proposed to divide this enormous Presidency into two parts, to be called "the Presidency of Fort William in Bengal," and the "Presidency of Agra[7]."

It was to be determined locally, what territories should be allotted to each.

§ 4.—*The first Lieutenant-Governorship (N.-W. Provinces).*

Though a "Governor of Agra" was actually appointed[8], the scheme was early abandoned, and instead of forming a new Presidency, the "North-West Provinces" were separated from the rest of Bengal and placed under a Lieutenant-Governor. This was ordered in 1836, and was legalised by the 5 and 6 Wm. IV, Cap. 52 (1835), which suspended the previous enactment ordering the creation of two presidencies, and rendered valid the appointment of the Lieutenant-Governor. Bengal was thus partly relieved and reduced to more reasonable dimensions.

§ 5.—*The Government of Bengal.*

But still there was another difficulty. There was no separate Governor or Lieutenant-Governor for Bengal. The Governor General of India was *ex-officio* Governor of Bengal; that is to say, he had to do the work of a local Governor in addition to his functions as Governor General with supreme control over all Governments. Accordingly, the Statute 16 and 17 Vic., Cap. 95 (1853), authorised the appointment of a separate Governor of Bengal, or (until such an officer should be appointed) a Lieutenant-Governor. This Act also looks back on the arrangements made for the North-West Provinces (just described), and again confirms them, going on to say that the Lieutenant-Governorship of Bengal was to consist of such part of the territories of the Presidency, as for the time

[7] This attempt to attach the historic reminiscences involved in the term "Presidency" to Agra, which had never known the system of "President and Board," is curious.

[8] See Notification (in the Political Department) of the 14th November 1834.

being, was not under the new Lieutenant-Governorship of the North-West Provinces.

A Lieutenant-Governor of Bengal was accordingly appointed under this Act[9].

§ 6.—*Unattached Provinces.*

So far then as the territory actually attached to the Bengal Presidency is concerned, the matter was settled; but at this time there were many districts which had never been placed under any presidency at all. Such were the "Saugor and Nerbudda" (Ságar and Narbada) territories (ceded after the Maráthá War of 1817-18), Coorg (Koḍagu) 1834, Nágpur (1854), the Panjáb (1849), and Pegu (1852). How were these to be provided for[10]?

It is probable that at first the case was not thoroughly understood; at all events, the only additional provision made by the law of 1853, was a general power to create one other Presidency besides those existing, and if it was not desired to make a "*Presidency*" then to appoint a Lieutenant-Governor of the territories to be provided for.

But a glance at the list of provinces or districts just given as "unattached," and a thought as to their geographical position, will show that this provision was not sufficient; the "unattached" provinces were too far apart to make it possible to provide for them by uniting them under one new "Presidency." The power, however, to make one new-Presidency or Lieutenant-Governorship was afterwards made use of for the purpose of constituting the Panjáb territories a separate Lieutenant-Governorship[1].

In the year 1854, the defect was supplied as regards the remaining British territories in India.

By the 17 and 18 Vic., Cap. 77, provision was made for the government of such territories or parts of territories as "it might

[9] See Resolution, Home Department, No. 415, dated 28th April 1854.

[10] Sind, annexed in 1843, had been attached to Bombay. Oudh was not annexed till afterwards (1856).

[1] In 1859.

not be advisable to include in any Presidency or Lieutenant-Governorship." Section 3 empowers the Governor General by proclamation (under Home sanction) to take such territories under his "immediate authority and management," or otherwise to provide for the administration of them. Under this Act the "Local Administrations" under Chief Commissioners, as they now exist, were constituted. As they are under the "direct orders" of the Governor General, the Government of India is itself the Local Government[2], and the Chief Commissioner constitutes a "Local Administration" as administering the orders of the Local Government.

It would of course be inconvenient if the Governor General had to exercise directly, in every one of these provinces, all the powers of a Local Government, and therefore, in 1867, an Indian Act (XXXII) was passed to enable him to relieve himself of such detailed work, by delegating certain of his powers as the "Local Government" to the Chief Commissioners then existing, which were those of Oudh, the Central Provinces, and British Burma. Since then, this process has been further simplified by inserting in Section 2, clause 10 of Act I of 1868 ("The General Clauses Act"), a definition of the term "Local Government." In all Acts passed after 1868, when anything is provided to be done by a Local Government, that *includes* the Chief Commissioner of any province; in fact, the delegation of the Governor General's power as a Local Government is in all such cases implied by, or contained in, the legal meaning of the term Local Government[3]. Of course the term has this wider meaning only when the context or some express provision, does not control or limit it.

[2] The provinces under Lieutenant-Governors are called "Local Governments," because such provinces, though subordinate to the Government of India, are not *immediately* under the orders of the Governor General.

[3] The "General Clauses Act" of 1868 defines the term "Local Government" to mean, "the person authorised by law to administer executive government in the part of British India in which the Act containing such expression shall operate, and shall include a Chief Commissioner." In Assam, where it was not convenient that this should take effect, Acts VIII and XII of 1874 were specially enacted, to regulate the powers of the Chief Commissioner.

The powers of the Governor General were further enlarged by the 46th section of the 24 and 25 Vic., Cap. 67 ("The Indian Councils' Act, 1861"), which gives him power to constitute new provinces and to appoint Lieutenant-Governors for them. The Act also makes provision for fixing the limits of every "Presidency division, province or territory in India" for the purposes of the Act; and for altering those limits.

In 1865 the 28th Vic., Cap. 17, provided the power to apportion or re-apportion the different territories among the existing Governorships and Lieutenant-Governorships.

There are also provisions of the Indian Legislature regarding minor divisions of territory, *i.e.*, creating new districts and altering the existing boundaries of districts, of which it is not here necessary to speak.

§ 7.—*Present constitution of Provinces.*

The existing division of the Indian territories not forming part of the older Presidencies, is then due to the Acts of 1853, 1854, and 1861.

The **Panjab**, which had before been a Chief Commissionership, was erected into a province under a Lieutenant-Governor[4], as already mentioned.

Oudh was annexed in 1856 and taken under direct management as a Chief Commissionership. In 1877 the then Chief Commissioner was appointed to be Lieutenant-Governor of the North-

[4] At first, by the proclamation of annexation and the despatch organising the new province (dated 31st March 1849), a Board of Administration composed of three members, was appointed. By the Government of India Notification No. 660, dated 4th February 1853, the Board was replaced by a Chief Commissioner, to be assisted by a Financial and a Judicial Commissioner. Last of all, by Notification No. 1, dated 1st January 1859, the Governor General "proclaimed that a separate Lieutenant-Governorship for the territories on the extreme northern frontier of Her Majesty's Indian Empire shall be established, and that the Panjáb, the tracts commonly called the trans-Sutlej States, the cis-Sutlej States, and the Delhi territory, shall be the jurisdiction of the Lieutenant-Governor." These limits are maintained to the present day. The Delhi districts were transferred to the Panjáb by Act XXXVIII of 1858, now repealed as spent.

West Provinces, and this practically, to some extent, amalgamated the two provinces, without, however, destroying any special administrative features of either[5].

By Resolution (Foreign Department) No. 9 of 2nd November 1861, the Chief Commissionership of the **Central Provinces** was constituted. This province was made up of the Ságar and Narbada territories and the Nágpur province; some other districts being afterwards added. The notification contains a long history of the administration of these provinces[6].

British Burma was constituted a Chief Commissionership on its present footing also in 1862[7]. As in the case of the Central Provinces, the Resolution gives a history of the previous administration; it recites that there had been three separate Commissioners of Arracan, Pegu, and Tenasserim, respectively; the first had

[5] Proceedings of Government of India, Home Department, No. 45, dated 17th January 1877. In order to facilitate the action of Government, an Act (XIV of 1878) was passed, which in many matters assimilated the powers of the Chief Commissioner of Oudh to those which the Lieutenant-Governor would exercise. This assimilation is *chiefly* effected by repealing some of the provisions in various Acts which require the Governor General's sanction to the Chief Commissioner's proceedings.

[6] Nágpur had been under a Commissioner as Agent for the Governor General. The Ságar and Narbada districts had at various times been transferred from one Government to another. They were originally under the Supreme Government; subsequently they were placed under the Lieutenant-Governor at Agra. Again, in 1842, the general control of them was vested in a Commissioner and Governor General's Agent, in direct communication with the Supreme Government, while the supervision of fiscal and judicial affairs remained with the Sudder Board and Sudder Court at Agra, respectively. After this, the general jurisdiction was again transferred to the Lieutenant-Governor of the North-Western Provinces, and so remained till the notification issued in 1861. Nimár had been managed chiefly as an 'assigned district' till its cession as a whole in 1860. Sambalpur was added to the Central Provinces, in 1862, Nimár in 1864, and a small estate called Bijragogarh in 1865. The fact that some tracts in Nágpur were ceded in 1817 does not place Nágpur first in the list of acquisitions. The province as a whole had been managed since the defeat of Appa Sahib in 1817, on behalf of the minor Bhonsla Rája (Raghoji III). He succeeded to the estates in 1830, but died without heirs in 1853, and the province lapsed to the British Government. The Revenue Settlement was introduced in 1860. The history of this, may be found in the "Law of the Central Provinces," by J. G. Nicholls, page 337, *et seq.*

[7] Resolution, Foreign Department (General), No. 212, dated 31st January 1862.

been under Bengal, the others directly under the Government of India; it was now desirable to unite them under one Chief Commissioner.

Berar (the Hyderabad Assigned Districts) is governed by British officers in virtue of the treaties of 1853 and 1860[8]. By the first treaty Berár and some other territories were assigned for the payment of interest on the debt due to the East India Company for the support of the Hyderabad Contingent force, and for some other purposes. The assignment was subject to an annual account of receipts and expenses. By the treaty of 1860 the debt was declared cancelled; certain of the territories assigned under the first treaty were restored, and Berár alone retained (within the general limits it now occupies, but including certain taluqas inside the boundaries which were before exempt from management). No account is now rendered to the Nizám, but the British Government pays to him any surplus it may have in hand after meeting the cost of administration, the cost of the troops of the Contingent, and certain allowances and pensions specified in the treaty.

The district of **Ajmer** and the **Merwara** parganas were constituted a Chief Commissionership[9], the Governor General's Agent for Rájputána being *ex-officio* Chief Commissioner.

The latest change has been to create **Assam** into a separate Chief Commissionership, it being taken under the direct orders of the Governor General under the provisions of the Act of 1854[10].

[8] Article 6 of the treaty of 1853 and article 6 of the treaty of 26th December 1860 (Aitchison's Treaties, Vol. 5, pp. 214–224). By the treaty of 1853 the districts are assigned "to the exclusive management of the British Resident for the time being at Hyderabad and to such officers acting under his orders, as may from time to time be appointed by the Government of India to the charge of those districts."

[9] By Notification No. 1007 (Foreign Department), dated 26th May 1871. This notification is also under the 17 and 18 Vic., Cap. 77, Section 3.

[10] See Notification No. 379, dated 7th February 1874 (*Gazette of India*, Part II, p. 53). Assam includes Kámrúp, Darrang, Naugong, Sibságar, Lakhimpur, the Garo Hills, the Khási and Jaintyá Hills, the Nága Hills, Cachar and Goálpára. Sylhet was afterwards added, but in the same year.

§ 8.—*Non-Regulation provinces.*

It may here be naturally asked, why, although some of these provinces were not so geographically situated as to be capable of annexation to particular Presidencies, the others were not so annexed. In the first place, this would have made the Presidencies in some cases of too great an extent and very incompact. But there is another reason which no doubt, at the time, had still greater weight. It should be borne in mind that by the Statute of 1800 the consequence of such annexation would be, to render the new territories in all cases subject to the Regulations of the Presidency to which they were attached. This it was felt would be inconvenient; the Regulations were too precise and technical, and did not give sufficient latitude for that gradually progressive and paternal method of administration which experience has shown to be necessary in dealing with provinces newly brought under the influence of Western ideas of government.

Indeed, some difficulty had already been felt with reference to certain districts of the older provinces, which could not conveniently have been disjoined from the presidency or province in which they were situated; special Acts had to be passed to exempt such districts from the ordinary law[1].

Accordingly, when whole provinces like the Panjáb, Pegu, Oudh, and the Central Provinces, were in the same condition, it was natural that, on annexation, they should not have been declared to be attached to any Presidency. Consequently, these territories did not come under the Regulations[2], and became (as they are still called)

[1] Some of these old Acts are mentioned in Schedule II to Act XIV of 1874. These are mostly repealed as no longer necessary under the new system of "Scheduled Districts," which will be explained hereafter.

[2] This is quite correct, although in the Local Laws Acts, *e.g.*, of Oudh and the Panjáb, there will be found a few of the Bengal Regulations quoted as "in force" in these provinces. This is done because such Regulations have practically been complied with, or because in the orders for settling the administration of the new provinces, it was directed that the "general spirit" of certain Regulations should be followed, and it is more convenient now to recognise them as in force.

"Non-Regulation Provinces"; and they now comprise the larger portion of the total number of districts in British India[3].

It will next be asked what at the present time is practically the difference between a Non-Regulation and a Regulation Province? The answer to this will be better understood when we have taken a brief survey of the legislative powers of the Government. Here I will only so far anticipate as to say, that as far as the nature of the laws in force, the distinction has practically disappeared in favour of one which really is important, which is that certain parts of several provinces (whether these provinces as a whole are "Regulation" or "Non-Regulation") are, or may be, by Act XIV of 1874, exempted from the operation of the ordinary laws, except in so far as those laws, or any of them, may be declared applicable; and that a power exists for making special Rules or Regulations for them.

The only vestige of the original distinction between Regulation and Non-Regulation provinces survives in the titles, duties, and salaries of officials, and also in the fact that in Regulation Provinces certain posts are, by law, reserved to be held by members of the Covenanted Civil Service[4]. The origin of this difference was, that under the Act of 33rd Geo. III (1793), it was provided that offices under Government should be filled by Covenanted Civil Servants of the Presidency to which the

[3] Colonel Chesney (Indian Polity, 2nd edition, page 193) gives a list showing that there are 111 Non-Regulation to 97 Regulation districts. Readers must beware of certain inaccuracies in this otherwise excellent book, as regards the legal position of the Non-Regulation Provinces. The author is mistaken in supposing that the Non-Regulation Provinces were excluded from the operation of *Legislative enactments* till 1861. They were exempt from the *Regulations*, but all *Acts* applying generally to British India, passed by the Legislative Council (which began in 1834) applied equally to these territories, provided the province formed part of British India when the Act was passed. Thus, any general Act passed after 1849 would apply to the Panjáb, and one passed after 1856 to Oudh.

[4] The question what appointments in India, generally, must be held by Covenanted Civil Servants, and what must be so held in the Judicial and Revenue Branches in *Regulation Provinces*, is now determined by the Act of Parliament, 24 and 25 Vic., Cap. 54.

vacant office belonged. Consequently, districts not attached to any Presidency were not bound by this rule, and the Governor General could provide for their administration as he pleased.

It was both natural and advisable in such cases, that Military and Political officers (who had been in many cases engaged with the affairs of a province before its annexation) should be appointed to the task of first organising and conducting its new administration. There was nothing, however, to prevent Civilians, whether Covenanted or Uncovenanted, being also appointed, as their services became available; consequently, the Commission became a mixed one.

In the Non-Regulation Districts also, the District Officer has both civil, criminal, and revenue powers, and he is called "Deputy Commissioner," whereas in Regulation Districts he has only criminal and revenue functions, and is called "Magistrate and Collector." The Civil Judge is there a separate officer. In Oudh, too, which is otherwise a Non-Regulation province, the Deputy Commissioner does not exercise Civil Powers.

§ 9.—*List of Districts in India.*

The following abstract may be useful in enabling the student to trace the history of any district in the provinces treated of in this Manual:—

BENGAL.

Form of Government.	Date of acquisition and former territorial designation.	Name of present district.	Date of Revenue Settlement.	Remarks.
Governor of Bengal is also Governor General of India (Regulating Act, 1773). Separate Governorship authorised and *Lieut.-Governorship* of Bengal created, 1854 (Council added in 1862).	Bengal acquired generally in 1765 (with Bihar and Orissa).	Bardwán (A. D. 1760-63) Bankúra Birbhúm Húgli Howrah 24-Pergunnahs Jessore (Jasár) Nadiya Murshidábád Dinajpur Málda Rájshábi Rangpur Bogra (Bágura) Pabna	Decennial Settlement, 1790-91 made permanent by proclamation A. D. 1793.	All come under the permanent settlement, Regulations I and VIII of 1793. These may be individual estates temporarily settled in the districts.

BENGAL—*concluded.*

Form of Government.	Date of acquisition and former territorial designation.	Name of present district.	Date of Revenue Settlement.	Remarks.
Governor of Bengal is also Governor General of India (Regulating Act, 1773). Separate Governorship authorised and *Lieutenant-Governorship* of Bengal created, 1854 (Council added in 1862).	Bengal acquired generally in 1765 (with Bihar and Orissa).	Maimansingh Farídpur Bákirganj Dacca (Dákha) Purniya Bhágalpur Monghyr (Munger) Tipperah (Tipra) Noakhálí Chittagong A. D. 1760	......	The Hill Tracts are "scheduled" and were removed from the Regulations by Act XXII of 1860.
		Sontál Parganas	......	Part only permanently settled: the rest is a Government estate* under Act XXXVII of 1855 and Regulation III of 1872 and a special settlement.
	Old Orissa	Midnapore (Mednipur) A. D. 1760-63.	......	The Orissa of 1765 nearly coincides with this district.
	Chutiyá Nágpur. After Kol rebellion 1831-32, the South-West Frontier Agency was created by Regulation XIII of 1833. This "agency" became the Chotta (or Chuttyá) Nágpur Division in 1854 (Act XX).	Hazáribágh Lohardagga Singhbhúm Mánbhum		Parts of these were permanently settled, the other estates being variously settled (see Book II, chapter III, section 8). All are scheduled districts under Act XIV of 1874.
	Bihár (A. D. 1765.)	Patna Gáyá Shahábád	....	Permanent settlement as in Bengal proper.
		Darbhanga Muzaffarpur	......	Formerly one district—Tirhút.
		Sáran Champáran		
	Modern Orissa (Katák Province) taken from Maráthas, A. D. 1803.	Katák Balásúr Púri Tributary Mehals		Temporary settlement under Regulation VII of 1822 (first under XII of 1805). Settlement continued under Bengal Act X of 1867. As regards the "Tributary Mehals" the Khúrda estate, &c., see Book II, Chapter II, Section VII.
	Ceded in 1838, 1850, and 1865.	Darjeeling	......	Scheduled district.
		Jalpaigúri	......	Partly out of the old Rangpur district and partly the Western Dwárs taken from Bhutan 1865. Temporary settlements, except old part of Jalpaigúri, which is permanently settled.

* As early as 1780, the Dáman-i-koh was, by an Act of State, removed from the operation of the Regulations and declared a Government Estate.

ASSAM.

Form of Government.	Date of acquisition and former territorial designation.	Name of present district.	Date of Revenue Settlement.	Remarks.
Chief Commissionership in 1874.	Lapsed in 1830 to British Government.	Kachár	1859	Temporary settlement.
	Was acquired with Bengal in 1765.	Sylhet and part of Jaintiya (annexed 1835)	1872	Partly permanent settlement, partly temporary.
	Formed part of Rangpur and the hills on North-East frontier were first separated by Regulation in 1822.	Garo Hills	......	This was under a special Regulation of 1876, which terminated in 1881, and will probably be in future dealt with like an ordinary district.
	Became a political agency after expedition of 1833. Jaintya Hills were annexed in 1835.	Khasi and Jaintya Hills	......	No regular revenue system; a house tax collected.
	Under Political Agency.	Nága Hills	......	No regular revenue system.
	In 1765 with Bengal.	Goalpára	......	Originally part of Rangpur and permanently settled, all but the Eastern Dwárs annexed in 1865, which are settled under the Assam Rules.
	Annexed after 1st Burmese war, A. D. 1824.	Kamrúp, Darrang, Naugong, Sibságar, Lakhimpur	1877-78	Assam Settlement Rules of 1870.

NORTH-WESTERN PROVINCES.

Form of Government.	Date of acquisition and former territorial designation.	Name of present district.	Date of Revenue Settlement.	Remarks.
"Presidency of Agra," 1834, altered to Lieutenant-Governorship of the North-West provinces in 1836.	Benares province ceded A.D. 1775 by Asaf-ud-daula, Nawab of Oudh. Brought under Regulations in 1795.	Benares, Gházipur, Mirzapur (part), Jaunpur, Azimgarh (part)	......	Permanent settlement of 1793.
	With the rest of the district.	Mirzapur, certain tappas, and the part of district lying south of Kaimúr Hill range.	......	Scheduled district. Special law and settlement, see Note A to Book III.
	The "Ceded Districts." Treaty with Nawáb of Oudh. 1801.	Rest of Azimgarh	1866—77	Settled originally under Regulation VII of 1822 and IX of 1833, now Act XIX of 1873.
		Gorakhpur, Basti	1859—71	
		Allahábád	1867—78 not complete.	
		Banda		All but a small part, which was acquired later (1840).
		Fatihpur	1870—77	
		Hamirpur	1872—80	

NORTH-WESTERN PROVINCES—*continued.*

Form of Government.	Date of acquisition and former territorial designation.	Name of present district.	Date of Revenue settlement.	Remarks.
'Presidency of Agra,' 1834, altered to Lieutenant-Governorship of the North-West Provinces in 1836.	The "Ceded Districts." Treaty with Nawáb of Oudh, 1801.	Cawnpore (Káhnpur) .	1868—78	
		Etáwa	1868—74	
		Mainpúri . . .	1866—74	
		Etáh	1863—73	
		Bareli (and Pílibít) .	1865—72	
		Shahahánpur . .	1867—74	
		Badáon	1864—72	
		Bijnaur . . .	1864—74	
		Murádábád . . .	1872—80	
		Farukhábád . . .	1863—75	
		The Tarái Parganas .	......	Scheduled district, under special law. Regulation IV of 1876.
	"The Conquered Districts," under Lord Lake, 1803.	Aligarh	1866—74	
		Mathura . . .	1872—79	
		Bulandshahr . . .	1858—66	
		Meerut (Mírath) . .	1865—70	
		Muzaffarnagar . .	1860—75	
		Saháranpur . . .	1854—70	
		Agra	1872—80	
		Delhi districts . .	......	Now in the Panjáb.
	From Nepál, 1815.	Dehra Dún . . .	1860—67	Regulation districts since July 1871, except pargana of Jannsar Báwar.
		Kumáon . . .	1863—73	Scheduled district. Special law. Ordinary revenue law only partly in force.
		Garhwál . . .	1856—64	
	Acquired by lapse, forfeiture, or treaty since 1840. Bandelkhand.	Jhánsí	1854—67	Scheduled districts under Act XIV of 1874.
		Lalitpur . . .	1853—69	Administered on system resembling Panjáb (Deputy Commissioner, &c.). Ordinary revenue law is however in force, and settlements were made in the usual way.
		Jaláun	1858—74	

OUDH.

Form of Government.	Date of acquisition and former territorial designation.	Name of present district.	Date of Revenue Settlement.	Remarks.
Chief Commissioner.	Annexed in February 1856.	All the districts .	Between 1860 and the present time.	Settled under local rules of 1861 which had the force of law under the Indian Councils Act (now Act XVII of 1876).

PANJAB.

Form of Government.	Date of acquisition and former territorial designation.	Name of present district.	Date of Revenue Settlement.	Remarks.
Under Board of Administration, 1849—1853. Under Chief Commissioner, 1853—1859. Lieutenant-Governorship, 1st January 1859.	Annexed 31st March 1849, after 2nd Sikh war.	Pesháwar	1869—75	All scheduled districts under Act XIV, 1874. But the ordinary revenue and settlement law is applicable, except to Hazára, which has special Revenue and Rent Regulations (under 33 Vic., Cap. 3).
		Kohát	1874—79	
		Hazárá	1868—74	
		Bannu	1872—78	
		Dera Ismail Khán	1872—79	
		Dera Ghází Khán	1869—74	
		* Multán	1872—80	
		Muzaffargarh	1872—80	Settlement just completed.
		* Montgomery	1868—73	Formerly called Gugaira.
		* Jhang	1874—80	
		* Gujránwálla	1866—68	
		* Lahore	1865—69	
		Ferozepore (Firozpur)	1851—55	Is Cis-Sutlej, and was annexed in December 1845.
		* Amritsar	1863—68	
		* Gurdaspúr	1862—65	This was the first of the revised settlements.
		* Sialkot	1865—68	
		* Gujrát	1866—68	
		Sháhpur	1854—66	
		Ráwalpindi	1855—64	
		* Jhelum (Jihlam)	1874—80	
	Ceded to British by treaty in March 1846, after 1st Sikh war.	Kangra	1846—52	Record of rights revised 1865—62. Settlement expires in 1882.
		Jálandhar	1846—51	Revision begun.
		Hushyárpur	1846—52	But now being re-settled.
	Cis-Sutlej States December 1845†	Simla	—	Only the area of the Simla Municipality, about 20 square miles, and portions at Kotgarh and Kotkhai. After Gorkhá war 1814—16 and subsequently.
	Cis-Sutlej States December 1845†	Lúdiána	1847—54	Revision begun 1878—79.
		Ambála	1847—53 (Northern parganas finished in 1856).	
		* Karnál	1872—80	Karnal is made up of Pánipat (Delhi territory) and Karnal and Kaithal, parts of the old Thanesar district, the rest of which, on its abolition, went to Ambála.
	By Lord Lake in 1803. Transferred to Panjab in February 1858.	* Gurgáon	1874—79	
		* Delhi (Dihlí)	1871—80	
		* Rohtak	1873—80	
		Sirsa	Settlement expired in 1873—76	
		* Hisár	1860—64	

NOTE.—In the districts marked * the settlement was the *second* regular settlement. All districts (except Hazára) were originally settled on the North-Western Provinces system, on orders and instructions based on "Thomason's Directions," and the spirit of Regulation VII of 1822. Now under Act XXXIII of 1871.

† Consisting (*a*) of the possessions of Mahárája Dalip Singh, east of Sutlej; (*b*) territories lapsed by failure of heirs to chiefs who came under protection in 1808-9; or confiscated in 1847 for misconduct of chiefs in the 1st Sikh war.

CENTRAL PROVINCES.

Form of Government.	Date of acquisition and former territorial designation.	Name of present district.	Date of Revenue Settlement.	Remarks.
Chief Commissionership, 1861-62.	"Saugor and Nerbudda" territories, ceded partly by the Peshwá (1817), partly by Nagpur Rája (1881).	Ságar	1854—67	The Ságar and Narbada territories were regularly settled for twenty years in 1834—37. The rest mostly under summary settlements and farms, &c., till general introduction of the North-Western Provinces system. The settlements generally were made between 1855 and 1869, under rules and instructions embodied in the Central Provinces Settlement Code, 1863, and now Act XVIII of 1881.
		Damoh	1860—65	
		Jabalpur (with Bijragogarh, confiscated in 1857, added to district in 1865.)	1855—67	
		Mandlá	1864—69	
	"Saugor and Nerbudda" territories, ceded partly by the Peshwá (1817), partly by Nágpur Rája (1818).	Seoní	1858—67	
		Baitul	1855—64	
		Narsinghpur	1856—67	
		Hushangábád	1855—66	
	Nágpur province, as a whole, ceded in 1853. Small portions before ceded in 1817-18.	Nágpur	1858—67	
		Wardhá	1857—66	
		Bhandárá	1858—67	
		Ráipur	1862—69	
		Biláspur	1863—68	
		Chánda	1862—69	
		(Upper Godavery is now the Sironcha sub-division of Chándá (added in 1860).)	1863—67	
		Chhindwára	1862—67	
		Sambalpur	......	Ceded by Nágpur Rája in 1818; cession confirmed in 1826; given over to one of the old Rájput Rájas under political supervision under the Bengal South-West Frontier Agency: lapsed in 1849; still remained under political charge; added to Central Provinces in 1862; first settled in 1854 for twelve years.
	1860	Nimár	1866—69	Portions were ceded or assigned from time to time between 1818 and 1825. In 1844, the revenue was assigned by Sindia, and was at last ceded as a whole in 1860. Added to Central Provinces in 1864.

BOMBAY.

Form of Government.	Date of acquisition and former territorial designation.	Name of present district.	Date of Revenue Settlement.	Remarks.
Governor and Council (33 Geo. III., Cap. 52, A. D. 1793). [The Regulation districts were made subject to the general law by various local regulations, bearing date shortly after the acquisition of the district, all of which were repealed by Regulation I, 1827, which consolidated the law; this in its turn has become superseded.]	Treaties in 1802 and 1803	Surat	1859—73	Formerly one district, separated in 1865.
		Baroch (Broach)	1863—77	
	By grant in 1803	Kairá	1867—68	Includes the Panch Maháls acquired from Sindia in 1860, and which are a "scheduled district" not subject to the Regulations.
	From Bájí Rao Peshwá in 1818	Ahmadábád	1851—62	
		Khandesh	1868—69	
	From Bájí Ráo Peshwá in 1818. The Dakhan (Deccan).	* Násik	1871—80	District formed in 1869-70 (nine talukas from old Ahmadnagar and three from Khandesh). Consists of two parts, the Dángs or ghát (hilly) tracts and the 'desh' or plain.
		Ahmadnagar	1850—58	Part of the old district also went to form the modern district of Sholapur.
		* Púná	1871—80	The Indápur taluk from 1867–68.
		Sholapur	1872—75	Old Sholapur was restored to its Raja in 1818, but again lapsed by failure of heirs to Government in 1848. The present district is a modified area—part of old Sholapur and part of Ahmadnagar.
		Satára	1863-64	Satára will come under Revision of Settlement in 1884-85.
		* Kaládgí	1874—78	
		Belgám	1850—57	Revision began 1878-79.
		Dhárwár	1874—80	
	The Konkan from the Peshwá 1818.	Thána (Tanna)	1854—67	
		Kolába	1854—67	A sub-division (Alibágh) lapsed in 1839.
		* Ratnágiri	1866—76	
		North Kanara	1863—80	Transferred from Madras in 1862.
	Sind. Annexed after war, 5th March 1843.	The districts of Sind	......	The frontier tracts not settled. The separate talukas variously settled between 1863-64 and 1874-75. Some not complete yet. All Sind forms a "scheduled district"

In districts marked * the revised settlement for the entire district is not yet complete. The dates against these also represent the first introduction of the revised assessment into any taluka.

The dates of acquisition given are the general dates, but many small portions of the districts were separately acquired by cession, exchange with Holkar and Sindia, &c. Thus the treaty with Sindia on 12th December 1860 affected a number of small tracts in Púna and Ahmadnagar. A treaty with the Nizám, December 1822, had a similar effect. A great many lapses from failure of heirs have also added villages to the districts.

MADRAS.

Form of Government.	Date of acquisition and former territorial designation.	Name of present district.	Date of Revenue Settlement.	Remarks.
Governor in Council (1793 A. D. by 33 Geo. III, Cap. 52).	The Northern Circars granted by Mughal Emperor 1765 and by Nizám in 1766: tribute at an end in 1823.	* Ganjam	1866—78§	Part of the district settled.
		* Vizagapatam		
		* Godavery	1858—65	These were formerly three districts — Rájamundry, Masulipatam, and Guntoor (up to 1859-60).
		* Kistna	1859—74	
	"The jaghire" ceded in 1750-63.	Madras		
		* Chingleput	1866—79	All districts with exception of those permanently settled under (M) Regulation XXV of 1802, and under Raiyatwári system of 1820.
	The Ceded Districts (by Nizám, 1800.	Bellary	1865—75	Part settled only.
		Cuddapa		
	Ceded in 1800 by Nizám.	Kurnool	1859—79	
	From the Nawab of the Carnatic, 1799—1801.	† Nellore	1861—75	
		† South Arcot	1855—62	Part settled only.
		*† North Arcot	......	
		† Tanjore	......	
		† Trichinopoly	1858—65	
		Madura	......	
		† Tinnevelly	1862—78	
	1792	Salem	......	These districts of 1792 and 1799 were acquired from Haidar Ali or Tipú Sultán.
	1799	Coimbatore	......	
		Nilgiris	......	
	1792	Kanara (South Kanara)	......	Divided in 1859 into two districts and North Kanara, transferred to Bombay, 1862.
		Malabar	......	

Districts with * are those in which permanently settled zamindari estates are found: those † are districts in which a joint village settlement was tried (A. D. 1808).

§ These dates refer to the Revenue Survey and Settlement: other districts are still managed on the old arrangements of former days.

BRITISH BURMA.

Form of Government.	Date of acquisition and former territorial designation.	Name of present district.	Date of Revenue Settlement.	Remarks.
Chief Commissioner in 1862.	Arracan, 1st Burmese war, 1824.	All districts	......	The "Hill tracts" are under a separate Regulation.
	Tenasserim, 1st Burmese war, 1824.	All districts	......	(Including Martaban.)
	Pegu, 2nd Burmese war, 1852.	All districts	......	All under Act II of 1876; settlements now in progress.

BERAR.

Form of Government.	Date of acquisition and former territorial designation.	Name of present district.	Date of Revenue Settlement.	Remarks.
Resident of Hyderabad.	Treaties of 1853—1860 with the Nizám.	Consists of six districts :— Umrâwati, Ellichpur, Akola, Buldána, Basim, Wún.	1861—78	Under Bombay settlement system; Settlement Rules of 1860—61.

COORG.

Form of Government.	Date of acquisition and former territorial designation.	Name of present district.	Date of Revenue Settlement.	Remarks.
Chief Commissioner of Coorg with "Superintendent" under him.	Annexed in May 1834.	The province consists of six taluks.	......	Two taluks have been separated and added to South Kanara in Madras Presidency.

AJMER AND MERWARA.

Form of Government.	Date of acquisition and former territorial designation.	Name of present district.	Date of Revenue Settlement.	Remarks.
Chief Commissioner, 1871.	Ceded in 1818 after the Pindarí War. Merwara reduced 1819-20—22.	Ajmer district and the parganas of Merwara united in 1842 under one officer.	1st settlement 1849-50 revised in 1874.	On the N.-W. Provinces system. There is a Commissioner and a Deputy Commissioner with an Assistant at Beáwar in Merwara.

CHAPTER II.

OF THE INDIAN LEGISLATURE, AND THE LAWS BY WHICH INDIA IS GOVERNED.

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§ 1.—*Reason for describing them.*

As I have already alluded to "Acts" and "Regulations" of the Indian Legislature, and shall have occasion continually to refer to such Acts and Regulations in the sequel, it will be desirable to give a brief account of the legislative powers under which Acts have been, and are, enacted for the Indian Empire.

Just as in the last chapter, we learned that the organisation of the several provinces for administrative purposes, was only accomplished gradually and by a series of Acts of Parliament, so the Indian Legislature has gradually grown into its present form after several statutes for organising it have been made, amended, and repealed. The tentative and changeful nature of the arrangements provided, are due to the same causes in both instances.

At first it was only necessary to provide for the internal affairs of the Company's factories, to determine what laws the settlers were to be deemed to carry with them, and were to be bound by, in their new home, and what courts were to administer justice among them. Soon, however, the sphere widened; whole provinces were acquired and added on to the original settlements; and then came the necessity of controlling, not only the European settlers, but of providing for the government of the country at large.

Trading charters had then to be supplemented by Acts of Parliament, providing for the direction and control of the East India Company (now that it was a governing body), regulating the appointment of high functionaries and subordinate agents in India, determining the constitution of Courts of Justice, and giving powers of local legislation.

It would serve no useful purpose, even if I had space available, to describe the early history of the Government which, in former days, as at present, was, from the necessity of the case, carried on partly in England and partly in India.

§ 2.—*Home Government of the present day.*

The "Court of Directors" of the Company and the "Board of Control," which acted as a sort of check (on the part of the Crown) on that Court, have passed away. The Home Government is now provided for by the Act 21 and 22 Vic., Cap. 106 (A. D. 1858), known as the "Act for the better government of India." This Statute transferred the government of the Company's possessions to the Crown, and provides that all the rights of the Company are to be exercised by the Crown, and all revenues to be received for and in the name of the Queen, and to be applied for the purposes of the government of India alone, subject to the provisions of the Act.

One of Her Majesty's Principal Secretaries of State is to exercise all the control that the Court of Directors of the old Company did, whether alone or under the Board of Control.

A Council of fifteen members, to be styled the "Council of India[1]," is also established. The Act fixes the salary of the members (payable out of the Indian revenue) and prohibits them from sitting or voting in Parliament. The Council is under the direction of the Secretary of State, and its duty under the Act, is to "conduct the business transacted in the United Kingdom in relation to the government of India and the correspondence with India."

It may be, and is, divided into Committees for different departments of business. If the Council differs from the Secretary of State, the opinion of the Secretary is final, except in some matters, for the decision of which the law declares a majority of votes necessary[2].

[1] See the Act, Sections 7 and 19.

[2] The most important of such cases is provided by section 41 of the Act itself. No grant or appropriation of Indian revenue or public property can be made without such majority.

§ 3.—*Legislative power in England.*

The Parliament has full power to legislate for India whenever it thinks fit. Not only has Parliament this general power, but the local Indian Legislature is expressly barred from dealing with certain subjects which it was thought wiser to reserve for the Imperial Parliament.

I may here mention that it is a settled rule of interpretation that Acts of Parliament applicable to "British India" give the law to the whole of those territories, not only as they happen to be at the time, but however they may be constituted thereafter. No matter how many provinces may be added to British India in future, Acts of Parliament now in force and applying to "British India" would equally apply to the new provinces added[8].

Such being the powers of the Secretary of State for India and his Council, and of the Imperial Parliament, we may now consider the powers and constitution of the Government of India.

§ 4.—*The Government of India.*

There is a Viceroy and Governor General with the supreme power of control and supervision over all the Governors and Lieutenant-Governors (who are the "Local Governments"). The Governors of Madras and Bombay retain some special powers (such as that of direct correspondence with the Home Government) not enjoyed by other Local Governments, and which in some respects affect their relation to the Government of India; but this it is not necessary to enter upon.

The Governor General may also himself become the Local Government of certain provinces by taking them under his direct management (under the Act 17 and 18 Vic., Cap. 77) in the

[8] See Sir H. (then Mr.) Maine's remarks in the Abstract of the Proceedings of the Legislative Council of 22nd March 1867 (*Calcutta Gazette*, 30th March 1867). Not so with Indian Acts:—if applicable to the "whole of the territories of the East India Company," that means the territories as they existed at the time. For example, an Act passed in 1848 would not (unless afterwards extended) apply to the Panjáb, because it was not till 1849 that the Panjáb formed part of the territories of the East India Company.

manner described in the last Chapter[4]. The Central Provinces, Oudh, Assam, and British Burma are examples of this. In such cases there is a Chief Commissioner who constitutes the "Local Administration."

The Governor General is now assisted by a Council of five Ordinary Members[5]. This is the Executive Council.

§ 5.—*The first form of Indian Legislature.*

The first Act which directly provided for the form of government in India, is the 13 Geo. III, Cap. 63 (passed in 1773), known as "The Regulating Act." It provided that the Government of Bengal should consist of a Governor General and Council (four Councillors), and this was to be the Supreme Government, subject, however, to control of the Home Authorities[6].

Legislative powers were given under this Statute, to the Governor General, for the "Settlement of Fort William" and other factories and places subordinate thereto.

Madras and Bombay had not yet any power of making Regulations. To the former of these Presidencies, powers were given by an Act of Parliament in 1800 (which extended powers similar to those which an Act of 1781, presently to be mentioned, had given to Bengal).

In 1807, Bombay was provided for, and the powers of Madras were at the same time improved and placed on the same footing.

The chief feature of the Regulating Act as it affected legislation, was, that all laws required to be registered in the Supreme Court of Judicature at Calcutta, in order to give them validity. This plan did not answer; and it was amended by an Act of 1781[7].

[4] See Chapter I, page 8.

[5] 24 and 25 Vic., Cap. 67 (Indian Councils Act), Section 3.

[6] *Vide* the Act, Sections 7, 8, and 9 and Tagore Lectures for 1872, page 44.

[7] The causes of the change were the antagonism which sprung up between the Supreme Court and the Council. All such matters must necessarily be here omitted. The student who desires to pursue the subject, may refer to the Tagore Lectures, 1872 (Lecture III), and the standard Histories.

§ 6.—*The Regulations.*

Under this amending Act of 1781, a large body of Regulations was passed[8]. The Marquis of Cornwallis revised and codified the Regulations in 1793, and on the 1st of May 1793, forty-eight Regulations, so revised, were passed, of which the forty-first declares the purpose of forming into a regular Code, all Regulations that might be enacted for the internal government of the British territories in Bengal.

That these Regulations did not exactly comply with the terms of the Act of 1773, while they exceeded the limits of the powers given by the Act of 1781, there can be no doubt. However, Parliament in 1797 (37 Geo. III, Cap. 142) recognised them as in fact valid, approved of the formation of a Code of such Regulations, and only added that they should be registered in the "Judicial Department," and that the reasons for each Regulation should be prefixed to it[9]. The Code thus issued in 1793 and added to down to 1833, forms what is called the Code of Bengal Regulations[10]." There are local Codes of Regulations also, for Madras and Bombay.

§ 7.—*No provision for provinces not annexed formally to the Bengal Presidency.*

It was noted in the last chapter that the force of the Regulations was in 1800 (39 and 40 Geo. III, Cap. 79), extended to the province of Benares and "all other factories, districts, and places which now are, or hereafter shall be, subordinate, and to all such provinces and districts *as may at any time hereafter be annexed to the Presidency* of Fort William in Bengal."

In the course of the preceding chapter, I have noticed the im-

[8] Tagore Law Lectures, 1872, page 80.

[9] This is the reason why long, and sometimes very instructive, preambles are to be found prefixed to some of the earlier Regulations, these preambles being, in fact, "explanatory memoranda" of the object and purpose of the law.

[10] Part of this is still in force. The various repealing Acts have done away with all obsolete Regulations; others, of course, have been specially repealed in the course of legislation.

portance of this provision, and also the fact that various new acquisitions of territory, though annexed in general terms to the British dominions, were *not specifically made subordinate* or annexed to, the Presidency of Bengal. Consequently, no Regulations applied to such provinces, nor was there any direct power of making laws for them till 1834, nor was all difficulty connected with the subject completely removed till 1861.

§ 8.—*The second Indian Legislature.*

The 28th August 1833—on which day the 3 and 4 Wm. IV, Cap. 85, was passed—brought to a close the era of the Regulations. By the 43rd section, the "Governor General in Council" was to make *Laws* and Regulations for all persons, for all Courts of justice, and for all places and things within British territory and regarding servants of the Company in allied Native States.

The Act provided also certain limits to the power of the Indian Legislature with regard to certain subjects of legislation.

In the former period, the legislative power had been to make "Rules, Regulations, and Ordinances"; the term "Regulation" was consequently adopted as most properly describing the enactments issued. Under the 3 and 4 William IV, Cap. 85, the power was given to make *laws* as well as Regulations; and it was thenceforward the custom to call the enactments of the Governor General in Council "Acts."

There is but little specific difference in the nature of a Regulation and an Act, except that the former were less concisely and technically drafted, and were usually preceded by the detailed expositions of the motives and purpose of the enactments previously alluded to. This, in "Acts," has been replaced by the brief "preamble[1]."

[1] There are also some differences in the manner of interpretation; but it is not here necessary to enter on such details. The introduction to "Field's Chronological Index" explains the subject clearly. The "Statement of Objects and Reasons," which is always published with the proposed law while it is yet in the stage of a "Bill," does away with the necessity for any lengthy preamble to the Act itself when passed. It is, however, itself probably a relic of the old exposition prefixed to the Regulations.

From 1793 to 1833, therefore, we have "Regulations," and from 1834 down to the present day we have "Acts."

These Acts are numbered consecutively through the year, and follow the calendar, not the official, year. This plan has ever since been adhered to, notwithstanding the modifications which have affected the constitution of the Legislature down to the present time.

By the Act of 1833, the Governments of Madras and Bombay were deprived of the power of legislation, and did not regain this power till 1861.

The Act gave the Governor General a Council of four members, of whom one was to be conversant with legal subjects. He was not a member of the Executive Council, and only sat when legislation was in question. Even then he was not necessarily present; nor need he concur when an Act was passed[2]. Under this Act, however, Commissioners were appointed *in India* to consider and propose drafts of laws[3].

§ 9.—*The Indian Legislature in its third stage.*

Our present system is nothing more than a development of the Legislature of the 3 and 4 Wm. IV, Cap. 85. The first important change was made by the Act of 1853 (16 & 17 Vic., Cap. 15). It will be interesting to follow, in a very general manner, the changes made[4].

[2] For an excellent comparison of the various Legislatures in more detail, see Tagore Law Lectures, 1872, page 105 *et seq.*

[3] It was under these provisions that Lord Macaulay came out, the result of the Commissioners' labours being the Indian Penal Code, now so famous. By the Act of 1853 a Law Commissioner in England was appointed to advise the Crown, on the recommendations of the Law Commissioners in India.

[4] Acts passed under the constitution of 1834 are technically styled "*Acts of the Governor General of India in Council*"; those under the system of 1853 are *Acts of the "Legislative Council of India"*; those made since the Indian Councils Act of 1861 are "*Acts of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations.*" At the present day the drafts of proposed Acts are published in the *Gazette of India*, for the purpose of giving notice of the proposed law and of invoking criticism, and in that stage the draft is spoken of as a "Bill." When the Acts are passed by the Council and have received the assent of the Governor General, they are also published in the *Gazette*.

By this Act, some purely *legislative* members were added to the Council. These were appointed, one by each Governor of a Presidency or Lieutenant-Governor of a province. The Chief Justice of Bengal and one of the Judges, were also made members.

While, however, the Council was thus improved in two important features,—(*a*) local representation of provinces and (*b*) special adaptation for legislative functions,—it did not satisfy the ideas of many who could make their opinions heard. In those days the plan of a local legislature for each province was strongly advocated, and in 1859 Lord Canning sent home a despatch, in which not only this subject was dealt with, but the practice of the existing Council was criticised. Lord Canning advocated a separate legislature for Bombay, Madras, Bengal, the North-West Provinces, and the Panjáb. He also desired that natives of the country should be consulted, and that they should be able to give their opinions in their own language.

10.—*The Indian Legislature as it is at present (under the Indian Councils' Act).*

In 1861 was passed the 24 and 25 Vic., Cap. 67, the "Indian Councils' Act," which (as amended in some particulars by later

The Superintendent of Government Printing (at his office, No. 8, Hastings Street, Calcutta) publishes authorised copies of all Acts, which can be bought by the public at a small price, varying according to the length of the Act. The Legislative Department is also issuing a collected series of the Acts, grouped in volumes of "General Acts," and in "Codes," *i. e.*, the Acts referring specially or solely to each province. In these editions, which are of great value, tables are published showing how all the Acts and Regulations are disposed of—by repeal, &c. Only unrepealed enactments are printed, with the alterations introduced by later Acts (if passed in time for the printing). The provincial volumes, or "Codes," of Bengal, Madras, and Bombay, give all the Regulations and Acts of the Local Legislatures, as well as the Acts of the Supreme Legislature; and all the provincial volumes contain the "Regulations" issued for certain districts under the Act 33 Vic., Cap. 3. They do not, however, give the "rules made pursuant to various Acts," which are now so conspicuous a feature in recent Acts. These must be looked for in local Gazettes or reprints. Such "rules" are, however, of great convenience, enabling a multitude of details to be locally provided for which could not be entered in the Act itself without swelling its bulk enormously, since the "rules" are as various as are the conditions of the provinces. The Forest Officer will remember how important a place "rules" have in the Forest Acts of 1878 and 1881.

Statutes) is the law under which our present legislature subsists[5].

The nucleus of the Council is the Executive Council of the Governor General. This now consists of five Ordinary Members (with the Commander-in-Chief as an Extraordinary Member if so appointed by the Secretary of State). The Governor of Madras or Bombay becomes also another Extraordinary Member when the Council sits in his Presidency.

Of the five Ordinary Members, three are officials, Civil or Military (of ten years' standing at least), and of the remaining two, one must be a Barrister (or Scotch Advocate) of not less than five years' standing. The Barrister Member is generally spoken of as the "Legal Member" and the other as the "Financial Member." When the Council sits for legislative purposes, it has to be supplemented by a number of "Additional" Members[6], for the purpose of making laws and regulations only. These Additional Members have no power of voting except at legislative meetings. In number they must be not less than six nor more than twelve; one-half the number so nominated must (by Section 10) be non-official persons.

Provision is made for the Council meeting in the absence of the Governor General; and for the Governor General, when visiting any part of India, exercising his power without his Council.

But this power does not extend to legislation. The Governor General can never legislate apart from his Council; but the Council may sit notwithstanding the absence of the Governor-General. In such cases a "President in Council" is appointed according to the Act.

[5] All the recent Acts of Parliament, *viz.*, from 1855, can be found in the Collection of Statutes issued by Mr. Whitley Stokes in continuation of the "Law relating to India and the East India Company"; the former can easily be obtained, the latter is now out of print and scarce. But an edition of the Statutes is being printed in the Legislative Department.

[6] When the Council sits in any province, the Lieutenant-Governor (and by the 33 Vic., Cap. 3, Section 3, a Chief Commissioner also) becomes *ex-officio* a Member *for legislative purposes* only. The *ex-officio* Members may be in excess of the maximum of twelve Additional Members.

The Governor General (alone) has, however, a special[7] power to issue ordinances for the peace and good government of the country in cases of emergency.

Power is reserved to the Crown (through the Secretary of State in Council) to disallow any law or regulation passed in India; and the powers of the Council are restricted by section 22 in respect of certain subjects of legislation.

§ 11.—*Powers of Local Legislatures.*

The Act gives legislative powers to the Madras and Bombay Governments; consequently, the Local Codes which show a blank after 1833, begin to have Local Acts from 1862 onwards. For the other provinces the matter is differently stated. The provisions of the Act *are* to be extended to the Lieutenant-Governorship of Bengal, and *may* be extended to the North-West Provinces[8] and the Panjáb as soon as the Governor General deems it expedient.

[7] See section 23. This remains in force for a limited period only, and is subject to a "veto" from the Home Government (Secretary of State).

[8] Under these provisions the Bengal Council was constituted by proclamation on the 17th January 1862. No local legislature for the North-West Provinces or Panjáb has yet been constituted.

The following passage from the Tagore Lectures for 1872 may be here quoted as well describing the functions of the Councils when sitting as *legislative bodies* (pages 122-23):—

"The character of these Legislative Councils is simply this, that they are Committees for the purpose of making laws, Committees by means of which the Executive Government obtains advice and assistance in their legislation, and the public derive the benefit of full publicity being ensured at every stage of the law-making process. Although the Government enacts the laws through its Council, private legislation being unknown, yet the public has a right to make itself heard, and the Executive is bound to defend its legislation.

"And when the laws are once made, the Executive is as much bound by them as the public, and the duty of enforcing them belongs to the Courts of Justice. Such laws are in reality the orders of Government, but they are made in a manner which ensures publicity and discussion, are enforced by the Courts and not by the Executive, cannot be changed but by the same deliberate and public process as that by which they were made, and can be enforced against the Executive or in favour of individuals whenever occasion requires. The Councils are not deliberative bodies with respect to any subject but that of the immediate legislation before them. They cannot enquire

The local Governor is bound to transmit an authenticated copy of any law or regulation to which he has assented to the Governor General[9]. No such local law has any validity till the Governor General has assented thereto, and such assent shall have been signified by him to and published by the Governor. If the assent is withheld, the Governor General must signify his reasons in writing for so doing.

into grievances, call for information, or examine the conduct of the Executive. The acts of administration cannot be impugned, nor can they be properly defended in such assemblies, except with reference to the particular measure under discussion."

[9] And if the Bill contains penal clauses, it is ordered (as a matter of administrative regulation) by a despatch of the Secretary of State of 1st December 1862, that it should be submitted to the Governor General *before* it is locally passed into an Act.

Diagram or Table giving a "Conspectus of the Legislatures."

Legislature of 1834 (3 & 4 William IV, Cap. 85).	Legislature of 1853 (16 & 17 Vic., Cap. 95).	Legislature of 1861 (24 & 25 Vic., Cap. 67).
Governor General and Council of three, with a fourth member (a lawyer) for Legislative duty only.	Governor General and Council of four (all four being on the Executive Council); *also* The Chief Justice of Bengal, One Judge, *and* One "Legislative Member" appointed by each Governor and Lieutenant-Governor.	**Council of Governor General assembled for purpose of making Laws and Regulations.** **Supreme Council:** (A) Governor General and Council of five "Ordinary" Members. (Three of them officials and two non-officials usually one "Legal Member" and one "Financial Member"); *and as* "Extraordinary" Members— (1) Commander-in-Chief (if appointed), (2) Governor of Madras or Bombay, *ex-officio* when Council sits in his territories; *to which is added* (B) For legislative purposes only (no vote on other matters), "Additional Members," (not more than twelve nor less than six, one-half to be non-official), *and* (1) Lieutenant-Governor, (2) Chief Commissioner, *ex-officio* (and without reference to maximum of 12) when the Council sits for making Laws in their territories.
No Local Legislative Councils at Madras, Bombay, or Fort William.		Legislative Council, Bengal. — Act *directs* Governor General to appoint. (Done January 17th, 1862.) Legislative Council, Bombay. Legislative Council, Madras. — Constituted by the Act itself. Legislative Councils for other Provinces. — Act *allows* Governor General to appoint. (Not yet done.) Their "Acts" require the assent of the Governor General.

§ 12.—*Law of "Non-Regulation" Provinces.*

One section (25) of the Indian Councils Act I have reserved for notice till the conclusion of this chapter.

I have already spoken of "Non-Regulation Provinces," and so ar explained how they came into existence. We have seen that, unless expressly made subordinate to the presidency, a province did not come within the operation of the Regulations. Consequently, up to 1833, no provision existed by which anything in the nature of a legislative power existed for such places.

The Act 3 & 4 Wm. IV, Cap. 85, afforded only a partial remedy. It gave it, it is true, power to legislate for all British territory, so that provinces which were already British territory at the time were provided for; but nothing was said about the application of such Acts, if general in their character, to provinces not at the time British provinces, but added afterwards[10]. It soon became doubtful how far such Acts were practically in force. But the chief difficulty was, that in the newer provinces a number of matters had been provided for by local rules, circular orders, and official instructions, which emanated from the executive, but not from any legislative, authority. Business could not have been carried on without such rules, yet there was no legal basis for them, only the sanction of practice.

The Indian Councils Act of 1861 removed the difficulty, and by section 25 provides that "no rule, law, or regulation which, prior to the passing of this Act, shall have been made by"

the Governor General,
the Governor General in Council,
the Governor,
the Governor in Council,
the Lieutenant-Governor,

for and in respect of any such non-regulation province (*i.e.*, territory known from time to time as a non-regulation province) shall

[10] *Vide* note, p. 26; the remarks there quoted were made in the Council with reference to the Act XI of 1835, which, though applicable to all British territory, was not legally in force, *e.g.*, in the Panjáb, because in 1835 the Panjáb was not British territory.

be deemed invalid, "only by reason of the same not having been made in conformity" with the provisions of Acts regarding the powers and constitution of Councils and other authorities.[1]

§ 13.—*Local Laws Acts.*

In order to remove any possible doubt on the subject, the Indian Legislature has since expressly enacted "Local Laws Acts," which state what Rules and Acts and Regulations are to be deemed to be in force in the chief non-regulation provinces. In the Panjáb we have Act IV of 1872 (amended by XII of 1878); for Oudh, Act XVIII of 1876; for the Central Provinces, Act XX of 1875.

In 1874, also, an Act was passed (No. XV of 1874) which is called the "Laws Local Extent Act," and this, in a series of schedules, gives a list of previous Acts and Regulations which extend to the whole of India, or to the particular province (as the case may be), and the applicability of which was, or might be, previously doubtful.

§ 14.—*Scheduled Districts.*

As regards the extent and nature of the law in force, the old distinction of "Regulation" and "Non-Regulation" has virtually lost its meaning. Many of the old Regulations have been repealed or superseded, and some of those that remain have been expressly declared to apply to the Non-Regulation Provinces. Not only so, but all the more important branches of legislation—Civil and Criminal Procedure, Land Revenue, Stamps, Excise, Irrigation, the Law of Contract, the Criminal Law—have been provided for either by general Acts which apply to all the provinces at large, or by special Acts containing local details, but resembling each other in

[1] When rules and orders were made by "Boards of Administration" or "Chief Commissioners" they would not have validity under the Indian Councils Act, unless they had been confirmed by the Governor General, in which case they virtually became rules made by the Governor General. In this way the Panjáb Forest Rules of 1855 had validity, owing to their confirmation by the Governor General in Council. This validity has since been affirmed by the insertion of the rules in the schedule of the Panjáb Laws Act.

principle. But there is still a practical distinction of another kind to be mentioned, which is of importance and likely long to be maintained.

There are portions of the older Regulation Provinces, and also portions of the newer Non-Regulation Provinces themselves, which are "Extra Regulation" in a perfectly valid and current sense. These are now spoken of as the "scheduled districts," under the Act (XIV of 1874) passed to place them on an intelligible basis as regards the laws in force in them[2].

[2] The list may be summarised as follows:—

Scheduled Districts, Bengal.

I.—The Jalpaigúri and Darjiling Divisions.
II.—The Hill Tracts of Chittagong.
III.—The Sontál Parganas.
IV.—The Chutiá Nágpur Division.
V.—The Mahál of Angúl (in Orissa). [Bánki has recently been excluded and now forms part of the ordinary Púri district.]

North-Western Provinces.

I.—The Jhánsi Division, comprising the districts of Jhánsi, Jaláun, and Lalitpur.
II.—The Province of Kumáon and Garhwál.
III.—The Tarái Parganas, comprising Bázpur, Káshípur, Jáspur, Rudarpur, Gadarpur, Kilpúri, Nának Matthá, and Bilherí.
IV.—In the Mirzapur District—
(1) The tappas of Agori Khás and South Kon in the pargana of Agori.
(2) The tappa of British Singrauli in the pargana of Singrauli.
(3) The tappas of Phulwá, Dudhi, and Barhá in the pargana of Bichipár.
(4) The portion lying to the south of the Kaimúr range.
V.—The Family Domains of the Mahárája of Benares.
VI.—The tract of country known as Jaunsár-Báwar in the Dehra Dún district.

Panjáb.

The districts of Hazára, Peshávar, Kohát, Bannú, Dera Ismáil Khán, Dera Gházi Khán, Lahaul, and Spiti.

Central Provinces.

Certain zamíndárís of Chhattisgarh and Chánda, and the Chhindwárá jágírdári estates.

The Chief Commissionership of Ajmer and Merwára.

The Chief Commissioner of Assam.

British Burma.

The Hill Tracts of Arracan.

The districts are called "Scheduled" because they are noted in the "Schedules" of Act XIV of 1874.

None of the Acts of a general character passed before 1874, the local application of which is settled by Act XV of this same year, apply directly to the *Scheduled* districts; it is left to the Local Government to define by notification in each case,—

(*a*) what laws are *not* in force (so as to remove doubts in case it might be supposed that some law was in force);

(*b*) what laws *are* in force;

(*c*) and to extend Acts or parts of Acts to the district in question.

Of course all Acts *passed since* 1874 themselves define to what territories they extend, so that there can be no further doubt on the matter.

§ 15.—*Regulations under 33 Vic., Cap. 3.*

In order to provide a still more elastic and adaptable method of making rules which have legal validity, for provinces, in an elementary stage of progress, the Act 33 Vic., Cap. 3 (1870), provides that certain territories may at any time be declared by the Secretary of State to be territories for which it is desirable that special Regulations (other than the Acts of the Legislature) should be made. The districts so declared (if not already under Act XIV) *become* "Scheduled" whenever such declaration is made, so that there is in fact a power of creating new scheduled districts in addition to those in that Act. The Regulations regarding Hazára in the Panjáb, the Sontál Parganas in Bengal, regarding Assam, Ajmer,

Madras.

Certain estates in Ganjam, Vizagapatam, and Godávari districts (besides the Laccadive Islands).

Bombay.

Sind, the Panch Maháls (attached to the Kairá Collectorate), Aden, and certain villages of Mehwásí Chiefs.

Coorg.

The whole province (Chief Commissionership).

and the Hill Tracts of Arracan, &c., are all under this law. They are at once known from the old "Regulations" (of 1793—1833) by their bearing date since 1870.

§ 16.—*Résumé.*

In order to aid the student in remembering the ***principal stages*** in the growth of the Legislature, I present the following skeleton or abstract:—

(1) Originally each presidency had its own President and Council: no formal legislature being needed for settlers who bring their own law with them to the "factory" in which they settle.

A.D. 1773. 1781. 1797.

(2) Territories acquired and formal government begins; Courts have to deal with natives of the country; Legislative power necessary; given by the "Regulating Act" of 1773, subject to supervision of Supreme Court. This does not work, and is amended in 1781, but incompletely.

(3) A number of "Regulations" made; codified in 1793; recognised as valid by Act of Parliament, 1797. This, with subsequent additions up to 1833, forms the Code of "Bengal Regulations."

Applies to Bengal. Similar powers given to Madras in 1800, and both Madras and Bombay were still further empowered in 1807.

A.D. 1833.

(4) Legislature of 1834 (3 & 4 William IV, Cap. 85) for British India.

The "Acts" begin 1834 and onwards.

A.D. 1853.

(5) Improved in 1853 by adding local members from provinces and some judicial authorities.

Legislative powers *taken away* from Madras and Bombay, and do not yet exist in other provinces.

(6) Finally improved by Indian Councils Act, 1861.

A.D. 1861.

Legislative Councils (Acts subject to assent of Governor General) for Bombay and Madras. One *to be* provided for Bengal (this done in 1862); *may* be provided for other provinces (not yet acted on).

(7) Special power given to Secretary of State to declare certain territories amenable to the 33 Vic., Cap. 3. Thereon the head of the Local Government or Administration may propose to the Governor General in Council a Regulation, which, on being approved by him, becomes law.

A.D. 1870.

CHAPTER III.

A GENERAL VIEW OF THE LAND TENURES OF INDIA.

SECTION 1.—INTRODUCTORY.

§ 1.—*The possibility of a general explanation of land-tenures.*

THE heading must not be allowed to suggest that this section contains a general theory of the origin of the various land-tenures of India. Even if the means of attempting a historical generalisation were at hand, it would be quite beyond the scope of this Manual to make such an attempt.

But, in fact, the materials for generalisation are as yet hardly complete. It is only of late years that attention has been turned to the study of Indian institutions by the comparative method; and though we have many valuable reports describing special localities, but few of them give any clue to the place which the customs and tenures they describe, should take in the general history of institutions.

I can therefore only hope, in this section, to give a brief account of the more prominent forms of customary landholding, and endeavour to illustrate the forces and influences which have modified the tenures, and left them, as they now are, the product of circumstances—the outcome of physical, moral, and political conditions. This much is necessary by way of introduction; for the chapters which follow will not be intelligible to the student till he has apprehended certain general facts about Indian landholdings. These facts, and the vernacular terms in which they are enshrined, meet us at every turn; and without understanding them, the first steps in studying the land-revenue systems, cannot be taken.

The land, and the interests which different classes have in it, are the arena in which various revenue systems operate; and it is only following the natural order of things, first to consider the land and how it is held, and then to describe the systems on which the Government regulates and secures, at once its own revenue-interest in the land, and the rights of all classes of landed proprietors and cultivators.

At first sight, the land-tenures of India may seem to present a vast series of local varieties which have nothing in common. No doubt, when we consider the different local circumstances of the different provinces, we must be prepared to expect much real diversity, at any rate in details. And this diversity is made more prominent by the almost endless variety of local nomenclature.

Nevertheless, amid all this diversity,—notwithstanding the Babel of tongues and dialects, we are able to trace certain features, which again and again appear in the most dissimilar portions of the empire. We are able, in fact, to take note of certain customs of landholding which marked the establishment of the different Aryan-Hindu tribes wherever they went. These customs were modified, but not obliterated by later Muhammadan and other conquests; and they themselves, as well as the results of the Muhammadan system, are so easily traced and so generally surviving, that we may take them as the starting point for a practical study. And I have little doubt, that when Indian land-tenures have been fully investigated *comparatively*, these general facts will also furnish the basis of a theoretical study, which will result in their being traced to their explanation on a common principle of historical development.

§ 2.—*The division of land into "villages."*

The first feature which strikes us is, that, with the exception of a very few localities, every district in India shows the cultivated, or rather the occupied, land, as grouped into local areas

called "**villages**[1]." The varieties latent beneath the general name may be many; but on the map, the local sub-division—the first general unit above the individual field or holding—is the village. Each village has a local name, known limits, and an inhabited site in the midst, with or without outlying hamlets.

The places where there are no villages, are to be found in hilly country, where the hill sides are clothed with tropical vegetation. In these, the cultivation will often consist of limited permanent clearings or gardens, and each garden will have a cluster of two or three houses on it. The rest of the cultivation is of a temporary character. The settlements in the hills of Kanara are of this kind. A similar state of things is to be found in the Himalayan districts, where there is neither tropical vegetation nor (as a rule) any rich soil; but the nature of the ground is such that a large continuous expanse of land fit for cultivation cannot be found; hence the village can rarely be more than a hamlet—a cluster of a few houses in one place.

§ 3.—*Size of villages.*

The size of villages varies in different parts of India. In the Panjáb the average size is nearly 900 acres; in the Central Provinces 1,300; in the North-Western Provinces and Oudh (the land being more densely populated, highly cultivated, and consequently much sub-divided) it is only 600 acres, on the average[2].

§ 4.—*Two types of village.*

Indian villages may be grouped into two broad classes, which, before I describe their differences, I may at once characterise, for convenience of reference, as the **joint** or **united**, and the **non-united** village.

[1] The "village" is the "mauza" of our Revenue literature. Elphinstone and other authors often call it a "township." It need hardly be explained that throughout this book (and in all others dealing with Indian land revenue systems), the term "village" is used in the Indian sense, which in no respect resembles that which attaches to the term in England.

[2] Stack's Memorandum on Temporary Settlements (Government of India), 1880, page 8.

The essential feature of the joint village is, that all the land inside its limits, whether waste or cultivated, belongs (either as the result of its natural constitution, or of our revenue system) to the entire body of village "proprietors."

The details of these matters will come before us at a later stage. Here I must confine my narrative to general features.

In the joint-village, the management of affairs is by a "panch-áyat" or committee representing the heads or elders of each section: if there happen to be no sections, the 'panch' may be a single individual.

The village also is assessed by Government in one lump sum, for which the whole body is jointly responsible.

Consequently if one man fails, or dies without heirs, the co-proprietors pay up for him and take his lands, which they hold in common or divide among the sharers, according as the village is in one or other stage of joint or several management.

Outsiders cannot purchase land without consent of the body, and there is a right of pre-emption to the other sharers, if one wishes to sell.

In the non-united village, on the other hand, no one has any claim to anything but his own holding: the village of course makes use of the waste for grazing or wood-cutting, but the State can grant it away to any one it pleases.

The village again is managed by a single headman (called "patel" in Central India, "mandal" in Bengal, "muqaddam" in Northern India, and by various names, according to varieties of dialects, in the South). This headman is partly, at any rate, appointed by the State, though the office, like everything Hindu, becomes hereditary by custom.

The headman realised the Government revenue from each holding, and this was done by dividing the grain produce before it left the threshing-floor. In later times, when the governing power demanded a lump sum as revenue from the village, the headman apportioned the burden among the landholders. Each had then to pay the allotted share, whether light or heavy, but

there was no joint responsibility of the village as a body. If one man failed or absconded, the others had nothing to do with it: the headman arranged for the cultivation of the vacant holding.

There was no objection to outsiders coming in on the same terms as the rest, and there was no pre-emption right.

These are the salient points of contrast between the two types, but there are also some further details to be given which had best be separately described for each type of village.

§ 5.—*Origin of two types of village.*

It will naturally be asked, how it came to pass that these two types of village existed.

Most authors admit that it is partly due to the colonisation of India by different kinds of Aryan tribes.

The original inhabitants of India were in all probability pastoral races, but it is impossible now to form a theory of what their customs in regard to landholding may have been. We have now only relics of those races, in the Gonds, Bhíls, Paháriás, and other such tribes, who are still to be found in the hill ranges and in the remote and less civilised corners of the country. Their institutions can now only be learned from a special study of the tribes, and they have so long ceased to have any bearing on the general land-tenures of India, that, in a general sketch of this kind, an allusion to them would be unnecessary.

But to these tribes the Hindu races succeeded, before the dawn of history. The first immigrants are represented by the Hindu of Bengal, and some of the southern races, who, however, are probably mixed races, formed by the fusing of the Hindu tribes with the aborigines[3]. They originally occupied Northern India and moved southwards at a later date.

But this race was in its turn disturbed by other tribes of Aryan origin and Hindu religion, but who were more martial in character, and whose institutions were of a different character.

[3] See Standing Information regarding the Madras Presidency (edition of 1879), page 77. Campbell, Modern India, page 7.

It was the first race that gave rise to the 'non-united village' type of landholding; it was the second group of tribes that brought those habits of apportioning the land among tribal groups, which, aided by the principle of joint-succession and inheritance, resulted in the joint-village. These same tribes, too, brought those feudal customs of ruling which we shall have occasion to notice, as having a great effect on landholding customs in India.

Wherever, then, we have the non-united village still surviving as such, and not as a decayed form of the other (for such a decayed form is possible, as we shall presently see), we have communities in which the older Hindu race and its institutions were not completely displaced. Where we find, as in the Panjáb and its vicinity, that the joint-village is the predominant type, we conclude that the later Aryan races, more or less completely, drove out the older races and established themselves[4]. Joint villages, however, are not alone due to tribal settlements; they may arise in other ways, and often in the midst of the non-united ones. Moreover, villages originally non-united may become joint by the effect of our own Revenue Settlements.

§ 6.—*Non-united villages and the Hindu Ráj.*

The earliest form of landholding as we can still trace it in Bengal, in the old Oudh kingdoms, and in the districts of Central, Southern, and Western India, is the non-united village, the charac-

[4] It is not a mere theory, this double immigration of Aryan races. "Indeed," says Mr. (Sir G.) Campbell (Modern India, page 8), "we are not without a historical glimpse of the facts. We have very good and accurate accounts of Northern India as it was in Alexander's time; and we find that, in addition to the Hindu kingdoms * * * * he found settled or encamped in the Panjáb, great tribes of a purely republican constitution, far more warlike than any others which he encountered. The best account of them is to be found in Heeren, in the volume on the Persians, page 316. Heeren represents their constitution as aristocratic or under the government of their optimates * * * . Alexander treated with 300 deputies of a tribe, but it by no means follows that these optimates were other than elected deputies. On the contrary, it is evident that they were the 'Panches' or delegates of the people with whom we treat in the same country at the present day."

teristics of which I have stated. But the progress of the history of landholding is so dependent on the Hindu theory of State government, that I must give a description of the Hindu kingdom. These kingdoms contained within themselves the means whereby the non-united form of village might be replaced by the joint form. And in fact, it may be here stated at once, that while we assign generally, the non-united village as typical of the older Hindu system, and the united or joint-village as belonging to the system of the later military races,—Rájput,Ját, &c.,—it is also true, that joint-villages may, and do arise *out of*, the older Hindu Ráj and its institutions; and joint-villages have arisen in quite recent times, and may now arise, neither out of the old Hindu Ráj, nor yet out of later tribal customs, but simply by the principle of joint-succession, common to Hindu and Muhammadan alike; so that, given one man, rich enough to get an estate for himself to begin with, his heirs, in a few generations, will form several joint-villages out of their branches.

Under the first Hindu races, then, the country was portioned out into a series of small kingdoms. These, generally, were in feudal subordination to some greater Rája[5] and the minor rulers received the "tilak" or mark of investiture from the over-lord.

The Rája was always of the Chhatri (Kshatriya) class; this arrangement seems to have been as much a natural institution as was the Brahmanic priesthood itself. It is very remarkable, however, that the ruling family may be altered and one conqueror succeed another, without the form of the State undergoing any change[6].

The form of society described in the 'Laws of Manu' was the form we are now describing;—the Rája, and under him the villages, each with its headman, and some intermediate officials, supervisors of a hundred or a thousand villages.

[5] Whence the title Mahárájá Adhiráj. The Chinese pilgrims who travelled in India in the 5th century, saw the State barge of the great Kanauj Rája being towed along by eighteen feudatory princes.

[6] See some valuable remarks in Benett's Gonda Settlement Report, 1878, paras. 65-66. Gonda was an ancient kingdom, and was repeatedly subject to changes of dynasty, even *Pathán* rulers appearing in the series; but still the Ráj remained unaltered till the wave of Muhammadan conquest passed over it.

No joint-village, claiming a right over an entire area allotted by any tribal custom, was known to the author of Manu's Institutes. The Rája with his general right to a share in the grain, with a power of collecting taxes, with a right to the waste; and individual landholders, each deriving his right from the fact that he had cleared the land, and reclaimed it from jungle,—that was the only form known at that early date.

In Oudh, the memory of the early Hindu kingdoms is still distinctly preserved to us. The kingdom of Gonda has been described by Mr. W. C. Benett in the Settlement Report of Gonda district published in 1878.

Here we find the non-united villages, each landholder claiming only what he had cleared or brought under the plough, and the hereditary headman collecting the Rája's grain-share for him. Besides this share, the Rája took taxes of all kinds—on roads, on ferries, on wood-cutters who came from other states; besides many 'benevolences.'

The Rája had a right of disposal of the waste, in all cases where, by grant or otherwise, a right in a defined area was not alienated. I may fairly take Gonda as a representative. Here the villages were of the non-united type; all the villagers wanted and all they claimed was the free use of wood and grass. This they enjoyed; but when they were satisfied, the rest of the produce went to the Rája. It is also remarkable, that in the case of *timber*, the right of the villages was limited. A man might take a beam for his house, but if he left the country, he was bound to leave the timber in the house, which escheated to the Rája. In Gonda, too, we have also an indication of the very common right to "reserved" trees of a specially valuable kind. The Rája treated the Mohwa (or Máhua) tree (*Bassia latifolia*) as his, and in many cases retained his right even when the land on which it grew was in private occupation. Here we see a custom to which no doubt is due the State right to teak in Burma, to sandalwood, teak, blackwood, and other trees in other parts of India.

The right to the user of the waste was confined to the Rája's

own subjects. If a stranger came to cut wood in the Rája's forests, he was subject to a tax (tangárahi = axe-money).

These privileges of the Rája, suggestive as they are of considerable powers of disturbance, did not directly affect the village landholders, who continued to hold each man his own field, giving a customary share of the crop to the village artisans, and the priest, and dividing the rest between himself and the Rája.

It was just the same in the neighbouring kingdom of Utraulá[7]. In this we find exactly the same customs: the villages are all aggregates of cultivators under a headman who received certain allowances for the management. The Rája took his grain-share; and the rest of his revenues were derived from the numerous and ingenious taxes already alluded to; there was the sáme tax exacted for "kaprahi," or clothes for a new-born heir; the "múndan," or further levy, when the child's head was shaved for the first time; the "kutáhí," to repair the fort; and the "ghoráhí" or "háthiáhí," to pay for a horse or an elephant. The wood cut from the jungles was taxed, and road fees, bridge tolls, and trade taxes were exacted. The escheat (gáyárí) of property which had no heir, was also recognised.

What is also remarkable about the Utraulá Ráj is that change in the dynasty did not, till the Muhammadan power at Lucknow interfered, alter the customs much. Thus, in the middle of the sixteenth century, we find Utraulá, then held by a Rájput Rája, attacked by an Aghán, who appears to have been following the Emperor Humáyún, but who displeased that monarch, was dismissed, and had turned freebooter in consequence. The change of dynasty seems to have had no effect whatever on the local customs of the Ráj. The Rája, indeed, accepted a sanad of the "zamíndárí" of his "pargana," showing how in places less remote, and where the rule of the Mughal pressed more closely, the Rája of a petty State sinks into the mere proprietor of his estate with

[7] Utraulá is now a pargana of Gonda district. So that originally Gonda and Utraulá were two small neighbouring states or kingdoms. See Oudh Gazetteer, Vol. VII, p. 378, &c.

limited rights, his kingdom becoming a revenue sub-division under the Imperial system. All that the Emperor did in this case was, however, to exact a certain revenue or tribute payment.

When the State was dismembered later on in its history, the separate portions had all the attributes of the original state, each paying its share of the tribute to the Central Government.

How it was that joint-villages arose in the midst, or rather on the ruins of the earliest form of Hindu society, I will explain presently; meanwhile, having so far accounted for the *non-united* village, let me briefly review the history of the second or later group of tribes which, as I have said before, followed after a long interval, and, in many cases, displaced the earlier system of landholding.

§ 7.—*The later 'military' tribes.—Settlement as a people.*

This second immigration finds its modern representatives in the great tribe of Rájputs and of the Játs, who are probably of similar origin, and in fact claim for themselves that they *are* Rájputs who had, to some extent, lost caste[8].

It is remarkable that these tribes have given rise to two distinct forms of dominion over land, both of which are very clearly traceable in different parts of India.

In some places they settled *as a people,* occupying broad tracts of country (as we shall notice in the chapter on Panjáb Tenures). In other places they appeared merely as conquerors, a small band of armed invaders who took possession of the Government, and exacted tribute, but were not numerous enough to displace the original inhabitants and to colonise the country.

They produced a totally different effect on the land-tenures under each of these two conditions. Where they settled as a people, the tribe took up a whole area like the "mark" of the Germanic

[8] Campbell, Modern India, p. 9.

tribes of Europe[9] and divided it out into minor allotments for sections of the tribes, and then again into the ultimate lots for individuals or families. And as these people would be all connected together, and near relatives would be grouped together on the same lands, the institution of a "village," the whole claimed absolutely by a joint body of ancestrally connected tribesmen, readily arises. These tribal settlements may be found all over the Panjáb, to the complete exclusion of the older races who were either reduced or took refuge in the Himalaya. They went also south (though at a later period), and traces of joint-villages may be found in Berár and in the western districts, especially in Guzarát. They may be found again surviving as the Vellalars and others who own joint-villages in the Tamil country, where what is called the "mirásí" tenure is found[10].

§ 8.—*Tribal conquests.—No settlement as a people.*

But when the Rájputs (or tribes like them) started merely in smaller bands for plunder or conquest, they established quite a different order of things. In such cases their chief leader took the kingdom as Rája, with a portion of the country allotted to him as his royal demesne; the minor chiefs had their smaller estates, and the

[9] We can see this process most clearly exemplified in the frontier districts of the Panjáb; here tribes came in at a much later date than even those we are describing. Hazára will afford especially a clear instance of the iláqa or tribal territory sub-divided out among the clans and sub-sections. The institution of the Teuton "mark" and the Anglo-Saxon "vill" or township is traceable to a similar origin. If the student will take up Mr. Joshua Williams' "Lectures on Rights of Common" (London, H. Sweet, 1880) and read Lectures 4, 5, and 6, he will find that the description there given, might almost have been taken from a North Indian Settlement Report.

[10] The Tamil country is south of Nellore, along the eastern portion of Madras. See Standing Information, Madras, p. 82-3.

But I am in no way disposed to admit that "mirásí" really implies the right of a sharer in a joint-village. Words of similar import and origin are constantly used to describe a 'heritable' but separate interest in land. In the Dakhan there are mirásí holdings not necessarily connected with *joint*-villages; and the words wárisi and wirásat are used in the Himalaya to indicate ownership rights in land where joint-village communities are unknown.

individual followers settled down among the population of the country, but formed no kind of joint-village community. If they held land, they held it on the terms of being owners of as much as they got or took, and no more[1]. They paid no revenue to the State at first, but military service and even pecuniary aid (on special occasions) were always required.

We can see this state of things in Ajmer at the present day. The Hindu States in the Himalaya also are all on this model; the ruler is a Rájput, and there may or may not be subordinate Thákur's, Ráo's or other feudatory estates under him. He takes from all the villages (who are the original population) his grain-share; and the Rájputs are not found in numbers, nor do they form joint-villages. Exactly the same thing happened in the West Coast of Madras, consequent on the invasion of the Nairs of Malabar.

This brief outline will, I hope, serve to make it intelligible how it is, that we have Rájput *joint-villages* in the Panjáb, for example, and a Rájput *State organisation,* totally without joint-villages, in Ajmer and the Himalayan states.

§ 9.—*Other origins to joint-villages.—Descendants of farmers of revenue and grantees.*

I have now a somewhat more intricate task to perform. Having shown how the non-united village arose, and how the joint-village, in some places, may be traced to settlements of later and more martial tribes, I have yet to explain how the joint-villages, as we see them now, may arise in other ways also.

[1] In Ajmer this appears very clearly; there the scanty and uncertain rainfall renders permanent cultivation impossible, without a well or more commonly a tank or "band" of some kind. Anybody willing to construct a work of this kind had only to take the permission of the Rája on the royal or khálsa land, or of the chief in his estate, and then he erected his band or sunk his well, and became practically the proprietor of it and of the land watered by it. All unoccupied land remained at the disposal of the chief or the Rája, as the case might be. The different landowners who were settled together, of course formed groups, and got local names as villages, but they never formed a community, or laid claim to the waste as their common property.

One—and this operates in quite modern times—is simply that of a powerful individual who, no further back than the Mughal (or, in the Panjáb, the Sikh) times, got possession of certain villages as Revenue-farmer. He established himself there, and the present village joint-proprietary body are simply *the descendants of the original farmer or grantee.* Villages may arise just in the same way, from a grant of waste: the present owners are descendants of a grantee of a few generations back, as in Sirsa, in the Panjáb.

But there is a more curious origin for joint-villages than these. Such estates may spring out of the old Hindu kingdom, (1) by the effect of *grant* of the Rája; and (2) by the *division and dismemberment* of the Ráj itself.

§ 10.—*Birt or grant by the Rája:—the "zamíndárí birt."*

The earliest form of grant made by the old Hindu Rája is the "birt," which might mean an actual grant of waste land, the grant of a right to settle and occupy land, or a grant of the king's share or revenue of villages already occupied. As might be expected, a large number of these grants were "jangaltaráshí," made on favourable terms (rent-free for a period, probably) to encourage the improvement of the waste; others, which the Brahmans took care to represent as irresumable, were for religious purposes: and some were jivan-birts granted to favoured individuals and younger members of the Rája's family to afford them maintenance. The term "birt" constantly occurs in Oudh Revenue history, and occasionally elsewhere; it certainly represents a general and widespread institution of the Hindu system of Government. The "birt" was a permanent and heritable grant, but a grain-share, though a reduced one, was still payable to the Rája. A fee was also taken for the issue of the birt.

But such grants would not have modified the customs of land-holding had it not been that they were afterwards applied differently.

If we refer again to the case of Gonda, we shall notice a feature, which also occurred in the history of other districts, if not

universally. Certain powerful families, in possession of one or more villages, raised their position either with the consent of the Rája or by their own unaided influence, to the extent that they became possessed of the superior right throughout their estates.

Very probably a grant of the nature of a jágír or assignment of the revenue for military service, began the process, although a jágír grant did not give up any of the Rája's rights except to the revenue or grain-share. The estates which thus grew into independence, constituted what Mr. Benett calls "village zamíndárís."

In after-times, when the Rája was out of possession, he *granted such "zamíndárí" rights by "birt;"* but Mr. Benett thinks he could not have borne the humiliation of doing this, while he was in power.

The superior position consisted in this, that in the zamíndárí, the grant may or may not have excused the payment of revenue, but it gave up the Rája's *right to the waste*, and to taking taxes and tolls. The "zamíndár[2]" took them; and thus, in fact, he established an estate of greater or less size, in which he was in a position exactly equivalent to that which the Rája had, and he was owner of the land besides[3].

Such estates had a power of development and stability which was wanting to the Ráj itself. In the first place, the Rája had no really close connection with, or hold over, any lands but those which formed his personal and family holding. For the rest, he had the general right to a share in the produce and the other rights spoken of. As long as the royal family maintained the full power of the Ráj, these rights all centred in one person, descending to

[2] See a detailed note on this term in the next chapter; here I do not wish to break the thread of my narrative by explanation. I therefore only say briefly that the word has nothing to do with the "Bengal zamíndár;" it only implies that superior kind of interest in the land or estate whereby the owners claim the exclusive lordship of the entire land in their estate, and are exempted from royal claims to the waste and to various local imposts which others pay.

[3] And it is remarkable that here the grant distinctly disposed of the Rája's waste land and other rights; the formula is "sa-jal, sa-kát, sa-path," *i.e.*, including the right over water (ferry and fishery rights), over the forest and waste, and over the roads (for tolls, &c.)—Gonda Report, para. 86, p. 50.

to the eldest son only. But if the Rája died childless or was defeated by foreign or domestic enemies, and driven out, his estate dissolved at once. It was otherwise with the zamíndárí families; these not being indivisible, but succeeding jointly[4], were able to hold on to their estates, bring the waste under cultivation, and divide it out among the various family branches, all of whom were impelled by common interest to assert their claim and present a united front to any enemy. The families would then expand, cultivate more waste, purchase additional lands, and so become powerful enough to maintain their position under successive rulers, long after the Ráj from which they sprang had, as such, disappeared.

In the old Utraulá kingdom in Oudh, the growth of these zamíndárí estates is very curiously illustrated. When the State was reduced to subjection by the Muhammadan power, the Rája was made to pay tribute, and was left with certain villages as his own, while the Lucknow Government took the Rája's share or revenue from all the rest; but though the Rája lost the revenue for the villages, he still retained a certain lordship over them, and then it was that he began *to raise money by selling or granting* (for a consideration) *the complete zamíndárí right in one or more villages;* this gave not only the internal management and headship, but also the right to all the waste and other "manorial" rights in this area. The title thus created was (as before) known as the "birt zamíndárí" and became prevalent.

In Gonda, it will be remembered, the grant of this complete right inside a given area or estate was very rare, and where it existed was of later date, after the Rája had lost his original position. But in Utraulá such villages arose numerously in the way I stated. In this State also there were many villages assigned in jágír to the Muhammadan soldiers who had helped the Afghán

[4] The only trace of primogeniture being the "jethánsi"—the eldest son getting a larger share. The same thing is observable in Kangra among the Rájputs (the jethunda) and the Sikh jágírdárí families in the Cis-Sutlej States of the Panjáb. In Ajmer it would seem (and this may be true everywhere) that a sole succession by primogeniture is a later development than the custom of a larger share to the eldest.

invader to conquer and possess himself of the Ráj. These "jágírdárs" paid no revenue, and only a small yearly tribute besides the obligation to render military aid. Naturally enough, the families of such grantees soon became joint owners of the villages, the original landholders being their 'tenants.'

I must here briefly notice a very curious feature in some of these "zamíndárí villages." When the property was divided, as joint property usually is in the course of time, the family did not take—one branch, village A, and the other village B, and so on; but a plot was taken out of each village for each section. Consequently, in later times, the village ceased to be a singly-held group, capable of being treated for revenue purposes as one estate or mahál: the village became a mosaic of little pieces, each of which belonged to a different estate. This was the origin of the distinction between the "khetbat" and "pattibat" distribution of lands in Faizábád and other districts, which we shall meet with again in the chapter on the Oudh Settlement system.

§ 11.—*Joint-villages arising from dismemberment of the Ráj.*

I have said that the old Ráj was indivisible and descended by primogeniture, and so it was in Strict theory. But all the States did not retain the principle of indivisibility. In some kingdoms the succession was strictly to the eldest son, who took the entire kingdom and all that pertained to it. Younger sons may have been allowed life-interests in the revenue of certain lands, but these always in time became re-absorbed in the State. In such a kingdom, if the Rája died heirless or was absorbed by the Muhammadan power, the distinctive features of the Ráj simply disappeared, and the villages remained as a pargana or other group in the Mughal kingdom, and the old Rája became the "taluqdár." But in some kingdoms, on the death of the Rája, the estates were at once divided among the family, and if the division was carried far enough, the result would be the creation of a number of small jointly-owned and independent estates—in fact a *number of joint-villages*. There is reason to believe that in parts of Oudh and the

North-Western Provinces, where there are groups of joint-villages, belonging to the higher castes and not occupying a sufficiently large area of country to suggest a tribal settlement, the villages are due *to the dismemberment of ancient kingdoms.*

In the old Gonda kingdom of Oudh, for example, as it is in Kangra, the Simla Hill States, Ajmer, &c., to this day, the Ráj is always indivisible; the eldest son succeeds alone, younger sons receive a maintenance or a life-grant of the Rája's grain-share in certain villages, and these lapse and return to the Ráj. Here, then, there may be the occasional appearance of a zamíndárí or joint-village by the growth of a powerful local family or a grant; but the whole country does not change: the villages remain for the most part as they were, and the Rája dies out, or succumbs before the modern power and accepts his place as a taluqdár, or jágírdar, the new Government taking from the villages part of the revenue-share he would otherwise have had. In Rai Bareli[5], on the other hand, on the Rája Tilok Chand's death, the family sub-divided the domain, and it was all split up into a number of petty estates, which would in the end have been further divided and the individual families become the joint-proprietors of so many villages. In the course of time, however, some of the branches agreed to sub-divide no further: and so the district remains, showing, I think, some 60 fairly large estates, and 537 estates consisting of single villages. Time and the Muhammadan conquests have of course produced a certain admixture, but the general position of the Tilok Chandi Báis cannot for a moment fail to be discerned.

I have given all these details chiefly from the districts of Oudh, because Mr. Benett's reports describe them with remarkable force and perspicuity, and there can be no doubt after comparing the information (though of a less complete character) we possess from other sources, that the description is generally true of the older form of Hindu Ráj wherever it occurs. Locally, the history will vary

[5] In this district of 1,735 villages, 1,719 were held by Tilok Chandi Báis, some of them in groups forming taluqas, others in single villages owned by families. The origin of all this from Rája Tilok Chand is traced by Mr. Benett (Clans of Rai Bareli); see also Gazetteer of Oudh, Vol. III, *sub voce* (Rai Bareli).

in detail. A remarkable instance of the history of the influence of the Hindu Ráj on landed interests in Chutiya Nágpur, and of the *bouleversement* of rights which followed, will be found in some detail in the chapter on Bengal Tenures.

§ 12.—*Résumé.*

Having thus endeavoured to give an explanation of the origin of the two kinds of village in some detail, I may summarise the subject in the following diagram or table :—

The non-united village.	Characteristic of the earliest Hindu tribes, and of the kingdoms formed by them.
The united village ...	(i) is established by settlements of later and more martial Hindu tribes (who also, under other circumstances, establish a peculiar form of feudal rule *over* other tribes) ; (ii) results from grants made by the Hindu Rája of the older type ; (iii) from the dismemberment of the Ráj ; and (iv) from the joint succession to estates founded by grantees, revenue-farmers, &c.

Lastly, the British Revenue Settlement has affected the original constitution of the villages. Throughout the North-West Provinces and the Panjáb, the villages have become joint, whatever their early history may have been, because the system makes them so. Throughout Madras and Bombay, all or nearly all have remained or become *non-united* because the system does not require any joint responsibility.

§ 13.—*Leading features of joint-villages.*

Where the tenure is really joint, it is so, very generally, on the basis of the shares which result from the Hindu and Muhammadan

law or custom of inheritance, all the sharers being descended from a common ancestor. In some cases the measure of interest now appears to be based on a division of the soil into a certain number of ploughs. A "plough" is not a definite area of land, but represents a certain share in the whole village[6]. Perhaps in an early stage, the whole body of the settlers threw the whole proceeds of cultivation into a common stock and divided the profit or loss according to these shares. But the allotments represented by villages, soon came to be separately held, though within itself the village represents a joint ownership.

In those cases, where the village community is derived from an original tribal settlement, it is by no means clear how far the estate was joint. It was a well-established custom that one member could be required to exchange his holding periodically with another. The object of this was to reduce inequalities in the value or profitableness of the holdings or allotments, by periodical redistribution. When this stage was reached it is clear there was no joint-stock management of profit and expenses extending over the entire group or settlement, for otherwise redistribution would have been unnecessary. The lots within themselves were no doubt jointly held by the family or families who held them, and the different holders of allotments could of course unite to furnish defence against a common enemy.

Whether the joint-village originated in a tribal settlement, or is merely a joint body of owners descended from a single revenue-farmer, or a separate member of some princely house of old days, the *present* constitution is the same.

Whatever may have been the method or principle of coparcenership, the purely joint tenure rarely survives for any length of time: families obtain separate record and possession of their share,

[6] Thus, a village might be divided into 32 ploughs, of which 8 were held by one family, 4 by another, 10 by another, and 10 by yet another. But in these cases I should be always doubtful whether we have a really joint-village. A mere group of associated settlers, each bringing a certain power of cultivating land, would most naturally show this form of landholding.

or the process is carried still further, to the separation of individual holdings. Theoretical ancestral shares also get forgotten, and their place is taken by *de facto* holdings, the natural result of the greater wealth of one cultivator, the inequality in the value of land and its produce, and other such causes. In short, even those villages about whose joint character and original ancestral bond of union there can be no question, constantly tend to show the operation of that process which is known by jurists to be a necessary one in the history of property—the transition from *joint* to *several*.

Consequently in one village we may find that the land is still jointly held, in another that it is partly in common and partly in severalty; in another, circumstances have led each coparcener to get his share divided out to him, and then the joint tenure is a thing of the past, and is only maintained by some more or less slender threads. Still, however, the village body is the exclusive proprietor of *all* the land inside its limits, and until split up into actually separate estates on the revenue-roll, it remains jointly responsible for its revenue, and it maintains a certain unity in other ways, as we shall see hereafter.

Notwithstanding the inherent liability of such communities to change, to lose their ancestral shares, and hold land in lots modified by custom or by necessity, still a common ancestral origin is an important feature in the village history, and a genealogical tree showing all the ramifications of the family, is often among the most important of the records of a village settlement.

I have already mentioned that in the joint-village, the entire area within the village boundary, whether waste or cultivated, belonged to its owners. The community consequently, at first, jealously excluded outsiders. If the proprietary body needed more help than its own members could supply in clearing the primeval jungle, they called in outsiders to help in the "búta-shigáfí" or clearing; but such helpmates, however privileged their position as regards permanent occupancy and exemption from rent, did not become members of the community: they had no voice in the management, nor any claim to a share in the common.

Occasionally, however, circumstances made it desirable or necessary, actually to take an outsider into the community itself, but then, as usual in the early stages of development, some device was made use of, to salve the public feeling and mask the admission.

§ 14.—*Joint responsibility.*

The whole body is responsible jointly for the revenue, and this burden is distributed and recorded at settlement according to the village constitution: the details of this will appear in Book III. In the same way, expenses are incurred for various common purposes, such as entertaining guests and visitors, repairing the village walls, or the temple or mosque; such expenses are shared by the whole body, which levies a local rate for the purpose. The council of elders, the panch, with the aid of its accountant, prepares accounts of this expenditure, and the whole body audit it. This process is called the "bújhárat" or annual audit of accounts.

§ 15.—*Village officials.*

The village also has a staff of officials, and also of artisans, besides farm labourers.

The headmen—lambardárs as they are called in the countries where the joint-villages are commonest—are the heads of the sections of the village and form the "panch." They are elected by the village under a certain control of the Government officers, who must see that proper men are appointed, since the payment of the Government revenue depends on them.

The patwárí is the village accountant, who keeps the accounts as between the Government and the people, and as between the people themselves, revenue payer and lambardár, landowner and tenant: he also records such statistics as the Government require, and takes note of all changes in proprietary right, succession, sales, mortgages, and so forth.

The watchman ("chaukidár," "goraít," "dauráha," "sirkár," and many other names, according to locality) is guardian of the

boundaries, and is also the village messenger. In some cases, there is a messenger besides the watchman. He keeps watch at night, ascertains who comes into and goes out of the village, is expected to trace stolen property, and give an account of the bad characters in the village.

§ 16.—*Village artisans.*

The *artisans* vary according to locality, but there are always some who are universally found. The carpenter, the potter, the leather-worker or cobbler, and the blacksmith, are indispensable always; as there is always house-building to be done, well-gear to be made up, shoes for the villagers, leather-work for cattle-harness, iron-work for the plough, and other agricultural tools in general. The potter also makes the water-jars and household vessels, so that he is indispensable also; and in the Panjáb districts where the Persian wheel is used for raising water, the potter has to make the "tínd" or earthen jar, a series of which, fixed on the rope-ladder that passes over the wheel and down into the well, is required to complete the water-raising apparatus.

There will, usually, be a village water-carrier, also a washerman, and a "nai" or barber, who shaves and also carries messages connected with marriages, betrothals, &c., an astrologer, possibly also a minstrel. In South India, dancing-girls, who lend their services at weddings and festivals, are also counted in the village staff. So may be the dharwái, or person who weighs out grain, and the village money-changer. All these have their recognised position in the village, and their perquisites and remuneration in grain and otherwise.[7]

[7] The following is a list of village servants as recorded for the Gujránwála district of the Panjáb. This will serve as a fair general sample of how these people are paid. Their occupation, as well as the right to serve the village, is often hereditary.

1. The blacksmith (lohár). His dues are 1 bhari or wheat-sheaf in each harvest, one pai in money on each plough, 2 seers of molasses (gúr), and also one jar of sugarcane juice daily, while the press (belna) is working; and he is allowed to have one day's picking at the cotton-field at the end of the season.

Besides the village artisans, there may be tradesmen settled in the village, as the seller of brass pots, the cloth mercer and the grocer; but these do not form any part of the recognised village staff.

There are also certain menials, sweepers, grain-cleaners,—persons of low caste who take away dead cattle and have a right to their hides, and so forth.

A number of these work on the fields, and are divided into two classes, those who work for the whole season, and those who work only at harvest or on some special occasion, as when the sugarcane crop is cut and sugar is made.

The lower grades of village artisans often help on these occasions and get paid accordingly. The remuneration usually consists of a small part of the grain, and perhaps a blanket, a pair of shoes and some tobacco.

§ 17.—*Land how held.*

In the Panjáb we shall find that a large proportion of the village proprietors cultivate their own land. In other parts, how-

2. The carpenter (tarkhán). He makes the well wood-work, handles for tools, beds (chárpai), stools, &c. His dues are much the same as the lohár's.

3. The kumhár or potter.

4. The "rera" or grass-rope maker; the ropes are necessary to form the bands over the well-wheel which carry the water-pots. He gets one "bhari" and four topas of grain per well.

5. The "chúra" or sweeper. He cleans the corn, cleans the cattle-sheds, and makes the manure into cakes for fuel: a place for drying these cakes is often a recognised common allotment outside the village site.

6. The "mochi" or cobbler and chamár, who also has certain rights connected with the skins of the cattle that die.

7. The "hajjám" or "nai." He is the barber, but also carries messages and proposals connected with marriages and betrothals, and serves also at funerals.

8. The "dhobi" or washerman.

9. The "jhewar" (this is a local term), equivalent to "bhisti" or water-carrier.

Besides there may be the village astrologer and musician (mirási) and various religious office-holders—the purohit, or brahman, a fakír who keeps the takyá or village place of assembly; the "maulvi" for the mosque service, a "bhái" at a temple called dharmsála, a "sádh" at a thákurdwára, a pujári at shivála (temple of Siva), and a mahant of a "devidwára."

ever, the land is very commonly let out to *tenants*. These we shall find to be of various classes, which will be noticed when we come to study the tenures of each province.

§ 18.—*Classes resident in the village.*

Thus if we place together the different classes of persons who are concerned in the constitution of a joint-village, or at least form part of it, we shall have the following table of residents :—

1. The co-sharers in the proprietary body—the heads of the families being the "panch" or committee of management and perform—all or some of them—the functions of "headmen."
2. Tenants who hold lands under the proprietary body, either permanent and hereditary tenants (perhaps dating from the very foundation of the village, and enjoying a certain privileged position) or tenants-at-will.
3. The village officials (accountant, watchman, &c.)
4. The village artisans.
5. The resident tradesmen (who probably pay good rent for their houses, and some small taxes or dues besides).
6. Menials and farm labourers.

§ 19.—*The term "sír-land."*

Here I will take occasion to explain a term which will constantly be made use of in speaking of village lands—the term "sír" or special holding. When a village is managed jointly, that is when all the land is cultivated by tenants or otherwise, and the whole proceeds are thrown into a common stock, then no one has any special holding. But the plan does not usually last long. What is much more common is that each sharer in the body has a certain plot of land, which he cultivates himself with his own stock or by his own tenants; but however that may be, he gets the whole proceeds of it for himself. The rest of the land will then be held in common. Occasionally the proceeds of this common portion are

sufficient to pay the jama' or revenue assessment of the village and the expenses also; in that case they are so devoted; and then each holder has the whole produce of his "sír" land to himself. If the proceeds of the common lands do not suffice, then a rate is levied on each sharer to make up the deficiency[8].

"Sír" land is always much valued, and under our modern rent laws if an owner is dispossessed of his land, he stills has a right to remain on his "sír" as permanent tenant of it; nor can a right of occupancy grow up on "sír" land agains the owner, in favour of a tenant who is employed to cultivate

§ 20.—*Decayed condition of joint-villages in some districts.*

When the village community is in full survival, all these features may be distinctly noticed. But there are many districts in which the village community is found in a state of decay. The original proprietary body have not been able to maintain their exclusive privileges; their lands may have passed out of their hands by sale owing to poverty and the necessity of raising money to meet the State revenue. In that case, the village tenants, and the outsiders, whom there was nothing to prevent from coming in, have grown to be equal in position, and no longer admit the right of the old proprietary body to the waste and to what would have been the common. In some cases the old body still furnishes the village headmen, its members all call themselves by names indicating that they were once the superiors, and possibly still receive some small rents and perquisites—the relics of their former rights.

[8] The term "sír" is also used in other cases. For example, the zamíndár or revenue agent in Bengal originally had his "sír" or special lands, as distinguished from the rest of the lands in the estate, over which he had only a kind of general over-lordship. The "sír" might be excluded from the area on which revenue was assessed. So, when the Rájas in Oudh were reduced by the Muhammadan conquerors, the Nawáb took the revenue from the villages that the Rája once had, but by way of compensation, or to reward the Rája who became taluqdár and accountable to the treasury for the revenue of the taluq, a certain number of villages were left to the Rája revenue-free for his subsistence, and such lands were called his "sír" or "nánkár."

In South India such a state of things is now commonly found; and of course a raiyatwári system, whereby Government deals with each holding separately, and cares nothing for any theoretical unity of the whole village, tends to facilitate disintegration. In many such villages now Government treats the waste as at its disposal, and only so far recognises the old proprietary claims to it as to allow a preferential title to bring it under cultivation*.

§ 21.—*These communities have been a main factor in shaping the revenue system of Upper India.*

Village communities of the joint class were so universal, and had so completely survived all changes of time and government in the North-Western Provinces, and still more so in the Panjáb, that they served as the *point de départ* for a special revenue system. Such communities are also found in the Oudh districts and in the districts of the Central Provinces bordering on the North-West. But traces of them are also to be met with in Berár, in South India, and in some parts of Northern Bombay. Why it was that these communities in some parts managed to survive all the incidents of Muhammadan rule, of Maráthá plundering, or of Sikh conquest, and in others faded out and only left a memory in a few local terms or half-forgotten customs, is one of the most curious subjects for historical enquiry. But it is certain that the extreme state of decay into which the institution has fallen in some parts of India has given rise to much questioning as to whether the present villages were ever of the joint class, or were not rather the non-united type.

§ 22.—*The waste included in village areas.*

Before leaving the joint-village, I must, however, add some further details regarding the waste included in its area. In a

* In other places (as in the Chingleput district), the joint claim to the waste was found so strong, that Government wishing to maintain its own revenue system, whereby there is no village common land, thought it right to compensate the village proprietors for their waste rights; and then the waste became entirely at the disposal of Government.

Manual primarily designed for Forest Officers, this question has a great interest, because it is on the question whether or not the waste, scrub, and forest of a given district is or is not really included in the bounds of a village, not only as a matter of geographical location, but as being the *common property* of the village proprietary bodies, that the power of Government to constitute forest estates, whether for fuel and grass, or for timber, often depends[10].

This question of the waste or uncultivated part of the village land also shows us a point of difference between the English "vill" of old times and the Indian village. If the reader will refer to the 4th lecture of Mr. Williams' series alluded to in a previous footnote, he will find that not only the arable land is divided on known principles, but the right to use the waste, especially in respect to the pasture and the yield of hay for storing, is a matter which comes into great prominence.

In India, in the majority of cases, the village grazing is a somewhat secondary matter; plough-cattle are the chief, if not the only stock that is kept. Cattle are not kept for slaughter for food; and hence the grazing, though necessary, is of limited importance[1]. Moreover, outside the waste which the village regarded as appropriated as the common property of its own members, there was much more unoccupied waste, on which cattle could wander at will, and wood for the requirements of the household, and for making agricultural implements, be cut without let or hindrance. The uncultivated common inside the village boundary, was then retained

[10] The long-continued difficulty in the Madras Presidency, regarding the constitution of public forests in many of the districts, took its origin, or, more properly speaking, derived its support, from doubt and uncertainty as to what was the real status of the waste. In districts where the revenue system deals with an assessment levied on the individual plots of cultivation, the boundary of the village and what it really includes (important as it is for many purposes) has not the significance which it has in countries where the joint-village exists, and where everything included inside the boundary is recognised as absolutely the property of the village body. Hence policy has vacillated, and opinion been divided, whether the waste was the property of the State or not.

[1] But in the sequel notice will be taken of a curious custom of "grass reserves" in the Himalaya.

not so much for pasture, as for land which in future could be brought under the plough and so increase the wealth of the community. So long as this desired object could not be attained, it lay untilled and not managed in any special way; and in fact it was not practically distinguishable from the waste outside the boundaries. When our settlement operations began, it was always necessary to determine what waste was really part of the village estate and what was unoccupied and ownerless, *i.e.*, lying at the disposal of the State.

In the North-West Provinces, where the population was denser and the villages were located closer together, the whole of the waste was found, as a rule, to be justly claimed by the villages; and the boundaries of the estate of one community ran contiguously to those of the next.

In the Panjáb, and also in the Central Provinces, it was not so; the locations were further apart, and it was out of the question to suppose that the whole of the often vast expanse of scrub jungle, forest, and waste that intervened, was really part of one village on one side, and of the other on the other side, till the boundary lines of the two estates met at a given point. But it was difficult, as a rule (for of course there were in some cases, facts which afforded evidence on the question), to say what were the limits of the village common; and accordingly an artificial but equitable rule was invented by which a certain area of waste proportionate to the cultivated area was allotted and demarcated as belonging to the village, while the rest was distinctly marked off as State waste. It was to this procedure that the often extensive "Rakhs," as they are called in the Panjáb, are due. These have now proved of great public benefit as affording lands on which plantations can be made, or in which, by conserving the natural growth, important supplies of grass and fodder can be obtained; while, in the early days of railway construction, enormous supplies of wood-fuel were drawn from them.

The consequence of the recognition of *villages* as proprietary units is, that throughout Upper India, the status of the waste, where any yet remains, is in most cases beyond dispute.

§ 23.—*The non-united village.*

The villages of the **non-united** type are found chiefly, but not exclusively, in Central and Southern India. The plain country of the Dakhan districts of Bombay contains hardly any other form of village: so it is with many parts of Berár. In the Central Provinces also this type of village was prevalent, but the revenue system, as we shall afterwards see, has created a special proprietary right, so that the fact of the villages having been originally non-united, is now of no consequence. The village system of Bengal has long fallen into decay; but it is probable that the villages were of this type; and in Oudh and the North-West Provinces, wherever the dismemberment of the old Hindu kingdoms or the growth of grantees' families did not result in joint-villages, this form of landholding can clearly be traced, though at the present day, the Revenue system has made all villages equally "joint."

In Madras we meet with both types of village; but the non-united type is apparently commoner in the north and centre, while the best surviving forms of the joint community are in the southern districts. Indeed, in many countries where the non-united type of village may be said to be the generally prevailing one, there are nevertheless here and there joint-villages, which have evidently arisen among, and over, the non-united ones, or perhaps been coeval with them, owing to the causes which I have already briefly noticed, and which will again appear in more detail in the sequel.

§ 24.—*Leading features of the non-united village.*

In this non-united form of village there is, as I have said, no appearance of a village estate within which all the land cultivated as well as waste is the property of a joint body. There is nothing but an aggregate of residents, each occupying his own land, and owning no liability for his neighbour's revenue payment. In such villages it usually happens that the cultivators are of different castes

and races. In some villages it appears that originally an exchange or redistribution of holdings was enforced by custom. This does not, however, indicate that the village was held in joint-ownership, but merely that the co-settlers recognised a certain bond of union, because mutual protection and society are under any form of life necessary to mankind, and especially so in India. The bond of union centred in the recognition of a headman of the village ("patel" is one of his most widespread designations), who was partly the representative of the State and partly of the village; and whose office was practically hereditary.

The headman and his family were usually, if not always, the owners of the village site, which, in troublous times, was often walled or banked round and served as a fort[2]. A right to a house-site in this enclosed space is still the prerogative of the patel's family: outside and clustering around it, are the sites of the other village residents, the cattle stalls, and so forth.

The description given of the village accountant and the watchmen, the village artisans and menial servants in a joint-village, applies equally to the non-united village. These persons are all remunerated by customary dues,—in the early days of the community, partly by the privilege of selecting and cutting some portions of the standing crop, partly by the prior right to certain weights out of the heap of grain produce at the harvest, before the cultivator's and the ruler's shares were divided.

But in these villages the hereditary families of officials often got certain lands, which were, originally or in theory, held as remuneration for their services[3]. These often were the best lands in the village. They are called the "watan," and are looked on as one of the strongest forms of family property; for the joint succession, which

[2] It is still often spoken of as the "Garhi" or fort. See the chapter on Central Provinces Tenures (Book III, Chapter II, section 4).

[3] This did not always happen. In the Central Provinces the officials were rarely "watandár." But in Nimár and the country adjoining Bombay the institution becomes commoner. In some places even the artisans and menials had petty "watan" holdings.

is the universal feature of native law, places the whole of a patel's heirs jointly in possession of the "watan," though only one member of the family can actually exercise the official functions of headman.

The headman and the officials supervised the division of grain at harvest, and saw that every one got his due; in Maráthá times, when there was a money revenue to be paid, and a certain total was demanded from the village, it was the headman who made out the "lágán," or roll showing what share each landholder had to pay.

§ 25.—*Waste near the non-united village.*

But apart from such common allegiance to the hereditary patel, there was no other bond; each man held his own land and nothing more. There was no common land. Anybody was free, on getting permission from the State officials, to take up any bit of waste he liked and cultivate it. It is possible that the same circumstances which made the joint-village look to the waste chiefly as potentially arable land, and made it unnecessary to establish any customs of common or divided pasture, made also the landholders in the non-united village, indifferent to anything but their own cultivated holdings. Waste was abundant; it was not theirs in any sense, but still no one prevented them from grazing their cattle and cutting their wood, and that was all they wanted. In the old Hindu State, under which this form of village originated, it was the Rája who, after the villagers had satisfied their wants in wood and grass, took the rest. He it was who claimed certain rights over the timber, and who also had the right of granting the soil of the waste or forest as he pleased.

It may fairly, therefore, be argued, that at our modern settlements of such villages, there can be no claim to anything but the occupied holdings, as far as right in the soil is concerned; but that a prescriptive right to the *user* of the waste, not to its *ownership*, must be recognised.

In some places, the necessities of cultivation produced a more definite custom regarding the user of the waste than that I have

alluded to. In the Himalayan States, for example, though joint-villages are unknown, still definite customs of dividing the grass land into plots, called ghaini, ghásni or kharíta, obtain, and the villages carefully keep out fire, and cattle, cut the grass at a fixed season, and divide the hay, according to fixed custom.

In Coorg and other parts of the country exhibiting similar local features, we find a series of hills of greater or less elevation separated by level valleys; these latter are entirely devoted to rice cultivation and are watered by the streams which descend from the hill sides. This rice cultivation is carried on with the aid of manure obtained by burning branches of trees, or bamboos, weeds, and grass, and spread with or without an admixture of animal manure, on the rice-fields. This practice is spoken of in Bombay as "ráb" cultivation. In Bombay, in most cases, the want is provided for by allowing a general forest right of getting "ráb" from the Government forests for the village owners; but in Coorg and the localities I described, it became the custom that whenever a grant of rice-land was made, the grant carried with it a strip of the jungle-covered upland ("báne"), which would supply branches for manure, grazing for the plough-cattle, firewood for the household, and so forth; and so it came to be regarded as a necessary feature of every such landholding that a strip of jungle land was appendant to it.

There ought then, as a rule, to be no difficulty in finding out to whom the waste belongs; but there are cases where a serious doubt arises as to whether the village is truly a non-united one, or only a joint one which has fallen into decay, the old proprietary class having been unable to maintain its position, and the later settlers now appearing with practically equal rights; then the question is no doubt a difficult one, and must be decided as one of fact, on the best evidence available.

§ 26.—*Confusion of the different types of village.*

This reminds us that it is easy, on paper, to describe two classes or types of village, and there can be no doubt that in many districts

in India, the prevalence of one form or the other *is* distinctly recognisable. But it is not always so. In some districts both types may be found side by side; in others half obliterated traces of customs and claims remain, which render it doubtful in what class the villages should really be placed. This is to no inconsiderable extent due to the fact that property is an institution which is a progressive one, and is perpetually undergoing changes from one form to another, as we pass from ancient times to modern usages. It is especially so with joint and non-united villages. If we consider either form in itself, without reference to local history, it is obvious that one *may* arise out of the other and one *may change* into the other. If we commence with a joint-village managed in common, it is obvious that the owners may divide, that the shares on which they apportion their holdings, may become modified by time and circumstances, till at last each holder looks on his own fields as a separate property, and has forgotten all connection with his neighbours: the village has then become an aggregate of separate holdings, not to be distinguished from the non-united village of the Dakhan. In time, however, one of the landholders, or some outsider, gets richer than the others; he undertakes the revenue-farm of the village, and taking advantage of his position, slowly becomes the sole owner of all the lands. On his death, his sons and grandsons succeed, and as soon as the family tree throws out its branches, the estate again becomes joint, just as if it had been the original institution of one of the 'democratic' tribes of the Panjáb. If, on the other hand, you take a village, say, from an ancient Oudh kingdom,—where, as far as you can go back, you find nothing but the non-united village under the old Chhatri Rája; a powerful individual, by grant or usurpation, becomes landlord of the village and establishes a proprietary right; his descendants, claiming the whole, form a joint-village; at a later stage the family agrees to separate, and by force of circumstances the members have acquired more or less land than their legal or theoretical shares, and consequently they cease to remember, or act on, the shares; then the village is virtually non-united, even though a revenue-system classes it as bhaiáchárá, and professes to assert a joint

responsibility for the village revenue assessment. There have been, as might be expected, many discussions in Bombay, and even in Berár, as to whether the non-united villages—which, speaking generally, is the prevailing type in these countries—are not decayed villages once of the joint form. It is impossible to deny that this may be so in some cases, especially if any trace remains of an ancestral scheme of shares in distributing certain profits or dues collected in the village.

If we look, however, to the general character of the villages, we shall see in the Panjáb and other parts of India to which tribes of the same character penetrated, a general prevalence of the joint-villages,—some of them now in various stages of severalty holding, but on recognised shares; others which have long forgotten their share-system; others again which have decayed, outsiders having occupied lands in the village, and the whole seeming quite disconnected. In other provinces, we shall see reason to believe that the non-united village originally prevailed, but that joint-villages have grown up over, and among, them owing to the causes which I have endeavoured to indicate. In other districts, again, the old non-united form will be found to be quite universal, without any admixture.

If I might endeavour very roughly to classify the territories over which the different forms of village characteristically prevail, I should attempt something like the following skeleton view :—

1. *Panjáb.*—Tribal settlements in " iláqas " or groups of joint-villages, especially so in the frontier districts, but also in the Panjáb proper, where Rájputs and Játs, settled as a people, form a large proportion of the landholders. In the Hill States we have the feudal Rájput organisation, where only the ruling class is Rájput.
2. *The North-Western Provinces.*—In parts joint-tribal villages; but towards Oudh and the central districts, villages of the really non-united type, though jointly liable to Government under our Revenue law. Also throughout, many joint-villages formed by the descendants of revenue farmers and by the division of formerly ruling families.

3. *Oudh.*—Non-united villages of the old Hindu Ráj, but more or less mixed with, and in some cases superseded by, joint-villages, the result of the growth and subsequent division of leading families, &c.
4. *Central Provinces.*—Non-united villages, but the joint-form created by our settlement and tending to grow up out of Malguzárí families.
5. *Bombay.*—Non-united villages in the Dakhan. In Guzarát estates resulting from feudal Rájput organisation ,and joint-villages resulting from growth of powerful families, division, &c. (as in Oudh). The Konkan—proprietary tenures of "khots" or revenue farmers or lessees (which would, but for the raiyatwárí system, tend to produce joint-villages).
6. *Bengal.*—Non-united villages, but in Bihár villages more resembling the joint type.
7. *Madras.*—Non-united villages from the older Hindu immigration; joint-villages more or less in decay in the Tamil country. Tenures resulting from Rájput feudal organisation in Malabar, &c.
8. *Ajmer.*—Purely feudal Rájput organisation; joint-villages only created by our settlement. Something similar in the Himalayan States, in the Taluqdárí estates of Ahmadábád and those of the Nairs of Malabar.

SECTION II.—THE EFFECT OF THE DIFFERENT CONQUESTS ON LAND-TENURES IN INDIA.

§ 1.—*The subject stated.*

The history of India is, in fact, the history of a series of waves of immigration and conquest which have successively spread more or less completely over the country. The remarks made in the previous section with the design of explaining the still existing division of Indian districts into villages, have in themselves contained virtually an account of the effect of early immigrations. The old

Hindu Ráj with the non-united village, and the subsequent establishment of joint-villages in parts of the country, as well as of certain feudal or quasi-feudal tenures, mark the first stages. We have yet another period of progress to study; and this forms a later stage. We have to describe the changes that resulted from the Muhammadan, Maráthá, Sikh, and British conquests. In other words, our first stage has been to ascertain the result of archaic conquest; we have now to follow out the consequences of more recent advances.

§ 2.—*Modern changes as affecting the old Hindu Rulers and their rights in the soil.*

The changes which were introduced by the conquerors of later times, touched both the rulers and the ruled. But they touched them in different ways. The village landholder did not disappear, or rather the form of holding did not change, save to the extent which has been indicated, namely, the non-united villages gave way in some cases to joint-villages, and joint-villages in their turn exhibit all sorts of varieties in the course of a transition from early to modern forms of proprietary interest.

It seems to me certain that the Ráj institutions survive longest—I mean of course in their original character—in those districts where the powerful *joint*-village communities have not been allowed to grow up. For in such cases the Ráj has been indivisible; its rights have consequently been held together, and there is no reason why, except for the accidental failure of heirs, the Ráj should not go on to the end of time. The chief has not given place to any of these estate-holders, whose power within their own limits is equal to his, and is continually growing. All the landholders are claimants of their own holdings and nothing more. If, then, the Ráj is remotely situated and has not attracted the cupidity of foreign conquerors, it survives, perhaps paying a tribute to some distant Suzerain, but that is all. It is in this way that the Himalayan States have so many of them survived. It is true that the rulers of these States are of Rájput race, but they actually

exhibit all the features of the old Hindu kingdom. To this day (in the Chamba State, for example) may be seen the Rája's headmen collecting the grain-share and storing it in the "Kothi"—the royal granary, or District Revenue and Judicial Office. The Rája takes the old taxes, makes "birt" grants for the support of temples and pious Brahmans, and claims all the waste. The villages are small, because the nature of the hilly country is unfavourable to the foundation of large ones: but the isolation of landholding is not only due to this cause; it is due to its being the ancient custom of the Hindu tribes who form the population of the country.

But this survival could not take place in the plains of India, or in the rich and well-cultivated districts that formed the prize of conquest, the battle-field of contending powers. In such, the Rája either disappeared altogether, his villages being absorbed into the general territory of the Mughal conqueror, or he reappeared as the grantee of the new State. In some cases he succeeded in retaining his country in jágír;—that as he is a grantee allowed to collect the revenue in return for maintaining a military force and keeping peace and order within his boundaries, or he was entrusted with the revenue management of the country he once ruled over, and became a revenue collector, a zamíndár, or a taluqdár.

In these cases the *quondam* State became the "pargana" or revenue sub-division of the Muhammadan 'district.' But in many other places, the Rájas disappeared altogether, and their remote descendants now only appear as the holders of small or large grants, or as the owners of a few villages.

In Central India we shall find instances of great families overcome by the Maráthá power, becoming hereditary revenue officers, and still surviving as the "watandár" proprietors of lands to which they cling desperately, holding not only the lands indicative of village and pargana headship, but also minor watans of inferior village officers, all swept into their net together.

In Rájputána, we find to this day certain estates called "bhúm," which originated partly among the older Rájput

families who had been supplanted by later Rájput houses, but had been allowed an allodial or complete right in these lands, out of feeling for their former position.

The great families are said to be very proud of this bhúm title, and even great chiefs of other states will hold bhúmiya lands[4].

The tenures in Malabar called "janmi" are (as will appear in detail when we come to speak of Madras tenures) traceable to an original division of the country among the chiefs. The chiefships have passed away, and the holders of such estates at the present day, are only proprietors of lands paying revenue to the Government. There is no doubt whatever that if the country had been suitable to the aggregation of landholdings into villages, and the customs of marriage and succession had not been quite peculiar and exceptional, all these estates would have by this time become separated into villages jointly owned by descendants of the ruling families. The Malabar landlords regarded their holdings very much as the "bhúm" estate is still regarded in Rájputána; it was a hereditary estate, against the alienation of which a strong prejudice prevailed.

§ 3.—*The Muhammadan Conquest.*

The Muhammadan tribes from the North-West, who successively overran India, though different in character, brought with them one and the same system of law and government. But they were themselves but recent converts to the Moslem faith, and consequently did not display that strict and zealous adherence to the

[4] It is a curious feature that so often princes of Indian states should be much more anxious to cling to bhúmiya lands, or "watan" lands, or to zamíndárí lands, according to circumstances, than to others. It seems as if they foresaw the uncertainty of their tenure as chiefs: a man might be up to-day and down to-morrow. But the peculiar feelings of the people and their strong sense of hereditary right to such estates as are alluded to in the text, would secure the holders in them. Thus, the prince, ever fearing deposition from his chiefship, would feel that he had a refuge of a permanent character in these hereditary estates, which were vested not only with the greatest degree of stability known,—the nearest approach to a proprietary title that native ideas developed,—but also with a sort of dignity in the eyes of the people which rendered them worthy of being held by chiefs.

law of the Prophet which the true Muhammadans—the Arabs—would doubtless have enforced.

The necessities, too, of a powerful, but comparatively small, body of conquerors, compelled them to deal with the institutions of the conquered people very much as circumstances dictated, and less according to the theory of their own somewhat peculiar law.

§ 4.—*Its effect on the land-tenures.*

The land-tenures of the people themselves have been affected by these conquests to a varying extent. The joint-villages have always been stronger, as a rule, than the others; they may have changed hands, one race of proprietors may have given way to another, but the form of holding has remained unchanged.

But the non-united villages fared worse. In Bengal, the land-holders have sunk to the position of tenants with or without certain privileges which will be described presently. In other parts they have been variously affected. In general it may be said that later changes in the land-tenures have been mostly changes in the family or caste which possessed the land.

There were two principal means by which proprietary holdings were affected: one, the *grants* made by the State; the other, the arrangements made for *farming the Revenue.*

The first began to take effect at a very early date. It was so easy for a ruler to put a man in possession of a tract of land, and say 'realise for yourself the Rája's share; that will support your family, or will pay for the troop or the company of foot soldiers which you have to maintain.' All Oriental Governments, whose treasury has never been very steadily replenished, have adopted this method rather than be burdened with the regular payment of a cash pension or salary. The grantee so located had means of growing into the position of owner of the land, and of crushing out the original landowner's rights, as we shall see abundantly proved in the course of our study.

Revenue-farming did not become common as long as the State Revenue consisted of a share in the actual produce. But when it

became common to take a cash revenue, then if the headmen and regular officials of the country failed to collect it, the plan easily suggested itself, of agreeing with a contractor to make good to the treasury a specified sum for each village or group of villages. Such a plan was specially characteristic of the decline of the Government; it was resorted to when its hold over the country was not very firm. Owing to the large powers necessarily entrusted to the Revenue-farmer in arranging for the cultivation, he had great opportunities for getting hold of land, and of substituting himself and his descendants as actual owners of the villages.

§ 5.—*Revenue-collecting arrangements under the Mughals.*

At first, then, the village-tenures were not affected. In the days of strong rule, a settlement was made, and a properly controlled staff of revenue officials collected the revenue assessed by the settlement authority, from village to village, through the headmen and village officers; the village communities under such a system maintained their position without difficulty. But in the course of time, as the Mughal rule became weaker and more disorganised, it was found convenient in parts of the country to change the system and place large tracts of country in the hands of officers called zamíndárs, who collected a fixed sum as revenue. In Bengal this system developed most. It may be that it was necessitated by, or at all events connected with, the decay of the village institutions; but however this may be, in Bengal the village landholdings disappeared before the zamíndár, who became owner. In Bihár, where the villages were often of the united or joint type, this result did not happen to the same extent, or, at any rate, not in the same way.

As the rise of this system is explained in the immediate sequel, which should be read as a continuation of this chapter, I shall not further allude to it. But it ended in completely obliterating the original landed rights, in the zamíndár becoming the owner, and the former owners being sub-proprietors, "dependent

taluqdárs," and permanent leaseholders, or even "tenants," without any privileged position.

In Oudh, the first result of dealing with the old petty kingdoms seems to have been that the Ráj became the pargana; and the Lucknow rulers simply sent revenue collectors to take from the villages the revenue which would originally have gone to the Rája. In other respects they did not much interfere with the dignity of the old ruler. They allowed a certain number of villages, the revenue of which still went to the Rája for his subsistence, and these lands still form what is called the sír or nánkár, and give so much clear profit. Besides this, the Rája still received tribute and cesses from the villages, administered justice among them, commanded the militia, and took as escheats, estates that had no heirs[5]. Afterwards, when the Lucknow Government grew more corrupt, and when circumstances had brought about a change from a grain revenue to a payment in cash, it became the fashion to farm out the revenues of areas called taluqas, and thus the taluqdárí system—somewhat analogous to the zamíndárí system of Bengal—came into vogue. It was very natural that in many cases the surviving representatives of the Ráj should have become recognised as taluqdárs; and these were allowed to engage for a certain rental or revenue to the State treasury, but without much or, indeed, any control as to what they took from the villagers, or how they treated them, so long as the stipulated revenue came in. These taluqdárs, under British rule, became the "owners" of the estates, but with many and complicated *vrovisos* regarding the rights subordinate to them.

§ 6.—*Muhammadan Jágírs and Grants.*

The grant of land, or of the Government revenue on land, was also a common feature of the Muhammadan rule. The chief form of such grant was the jágír, which was an assignment of the revenues of a tract of country for the support of the grantee and a military force with which he was bound to come to the aid of the sovereign,

[5] It was during this stage, that zamíndárí rights were sold or granted, thus creating joir t estates and hastening the dismemberment of the Ráj.

on being summoned. The jágírdár might be the owner of some of the lands, originally; he may also have brought large areas of waste under cultivation at his own expense. His position, therefore, is one that is likely to grow and vary. In one place he may appear as the "owner" of the whole jágír; in another he may be only their chief, content with collecting his revenue or share in the produce. Grants called "mee'áfí" and "inám" of various kinds were also made: these were generally proprietary and involved no revenue-payment.

§ 7.—*The Maráthá Conquest.*

The Maráthá power, which arose with Sivají in the latter half of the seventeenth century, did not always affect the land-tenures. These rulers were thrifty: they did not make many State grants of land, but sometimes recognised existing revenue-free lands or "watan" holdings, but imposed a "jodi" or quit-rent on them, which was often heavy enough. When their power was well established, they recognised the advantage of dealing direct with the villagers through their hereditary headmen, and rarely employed middlemen and farmers, who, they knew, would always manage to intercept a good part of the receipts. No doubt, individual cultivators were ejected and changed, but the general customs of land-holding were, perhaps, less affected by Maráthá domination than by any other. The truth of this is proved by the exceptions; for there were districts where the Maráthá rule was never more than that of a temporary plunderer, and where it was perpetually in contest with powerful neighbours. In such districts it was necessary to farm the revenues of certain villages, and then the "málguzár" (or the "khot" of other parts), as is always the case, grew or worked himself into the position of proprietor of the village, crushing down the rights of the original landholders. There are districts in Bombay where the "khoti" tenure is to this day a regularly recognised one, being really nothing but a sort of superior right over certain areas, which has now become fixed in the families of khots or persons originally put in to manage the land and farm its revenues.

Throughout the Central Provinces, where such farmers were employed, their families constantly grew into the proprietary position, and were recognised as proprietors of the villages at our settlement.

§ 8.—*The Sikh Conquest.*

The Sikh Government cared nothing for the land-tenure, and only for its revenues. Where the village community, so universal in the Panjáb, was strong, it paid up the demand and its customs were unchanged. Nothing is commoner in Settlement Reports than to find allusions to the confusion introduced by the grinding Sikh rule into the land-tenures. This is true, however, rather of the holders of the land than of tenures. No doubt, in many districts and throughout the village estates, one man was ousted and another put in, without any regard to title, and only for the sake of getting the revenue, in the most arbitrary way. Afterwards, perhaps, the old ousted proprietors would come back, and get on to their land again as privileged tenants, or would be allowed some small rental or málikána in recognition of their lost position: and thus many cases of "sub-proprietary rights" under a superimposed new proprietary layer, and some cases of the "taluqdárí" tenure arose; but I am not aware that any new form of land-tenure owes its origin to the Sikh dominion—anything like the growth of the zamíndárí or taluqdárí tenure under the Mughal system.

The Sikh rule became centralised under Ranjít Singh, so that all the smaller chiefs, as a rule, were absorbed, and became the proprietary holders of villages merely, or were regarded as "jágírdárs" (for the Sikh system recognised the "jágír"). Some few states survived under the suzerainty of the Maharája.

In the Cis-Sutlej States the smaller Rájas retained their independence under British protection. At first a number of these were independent or sovereign states, but they were afterwards reduced to the condition of jágírdárs.

In the Ambála division of the Panjáb, the customs of these jágírdárs as over-lords and conquerors of the original village com-

munities which survived the conquest, but became proprietors in the second grade, are curious, and have been all defined at settlement. The "jágírdár" was originally the leader or chief of a "misl" or fighting corporation; every member of the misl (misldár) is entitled to some share in the profits. In jágírdárí villages a "sirkarda" collects the rents or rights of the jágírdár and distributes them among the graduated ranks of the body, first to the chief, and next to the "zaildárs," or subordinate chiefs, whose families form so many "pattis" and receive each the proper fractional part of the zail share; below them, the "rank and file" (the tábíadár) are entitled to some still smaller fraction of the revenue.

§ 9.—*Result of the changes.*

It will now, I think, be apparent, that while the customs of village landholding were originally simple, the effect of the different forms of rule has been partly to obliterate old tenures and create new ones, and partly to introduce confusion among the persons entitled to the tenure right, by successively displacing the older proprietary bodies and allowing later and more powerful successors to take their place, the tenure in form remaining the same. In either case the result has been to leave a series of proprietary strata, in which the upper ones are, *de facto*, the proprietors, but the lower ones each in his turn have certain claims, which ought not to be ignored. When all the facts are taken into consideration, it will appear that the attempt to provide legally for the proper position of these various shades of proprietary right in our modern Indian law, is no easy task.

In some cases, we have only the direct occupant to deal with, and the interest he has in his own field or holding is defined by law without much difficulty. It has been practically and simply laid down in the Revenue Code, in Bombay, and in British Burma has also received definition, though a somewhat complicated and technical one.

It is in countries (like Bengal, Oudh, and the Central Provinces)

where we have to deal with a series of concurrent interests that the greatest difficulty arises. And it is easy to see that the different parties may have preserved very different degrees of right. In some cases the now dominant proprietor may have clearly distanced all rivals; the people under him have sunk past revival, into being tenants. But in others the claims of the present and former proprietor may be very evenly balanced, and it may not be easy to say who is really best entitled; or again, granted a clear predominance of one, there still may be so much to be said for the other, that some practical form of recognition is equitably a necessity, though under what name may be doubtful.

§ 10.—*Proprietary right in India.*

And here it will be proper to call attention to the difficulty which surrounds any legislative definition of "proprietary right" in India. In the first place, if you do find a person who is now in a position which you generalise as that of "proprietor," what are the precise characteristics of the position? The native idea had not formulated such a thing as the *status* of a "proprietor." Custom, indeed, had produced the strongest feeling on the subject of the ancestral right to hold land[6]. The people who, as accidental groups

[6] Considerable controversy has arisen as to the question whether "rights of property" did or did not exist under the Native rule. The author of a little book (published by Allen & Co., London, in 1869) called *Notes on the North-West Provinces*, tries to show that under the Native systems an idea of private property in land always subsisted. He urges—

(1) that people were notoriously attached to the land; they had definite customs of holding, and clung to their holdings most tenaciously, often in spite of all sorts of exaction and oppression;

(2) that there are vernacular words to indicate lands cultivated by an *owner* (*e.g.*, the "sír land," a man's special holding for his own benefit (not for the common stock); also the terms "wárisi" and "wirásat" and "mirás," implying hereditary right, also the terms "málik" and "málikána," indicating *ownership*;

(3) that the share of the king or the Government is in the old law (*Institutes of Manu*) fixed at one-sixth of the produce, and that it was customary to consider the rank, family, and caste of the landholder in fixing the amount of revenue. Further, that *Manu* recognises the rest as belonging to the

associated for protection, or in other parts, as fellow-tribesmen, had first settled down on the area selected, who had cleared the land with much labour, had faced all the risks and difficulties of the task, and had built their village home, were looked upon as having a strong claim; but at a later time by the force of events and in

landowner, and distinctly asserts a right of ownership in the person who first cleared the land (see Elphinstone's History of India, 6th edition, p. 79);

(4) that land was always transferable by custom, and often, if a powerful man ousted violently some customary landholder, he, by way of conscience-money or compensation, allowed him a málikána, or payment in recognition of his overridden proprietary right.

All this is perfectly true; but I do not understand that any one contends that the Native idea did not take strongly to the notion, that particular persons were by custom entitled to hold land. This is clearly proved by the fact just stated, that when a customary holder was dispossessed, he often got an allowance called málikána—a sort of acknowledgment of his right. What is meant by saying that there was no "property" under Native rule is, that no Native system of law ever defined *in what* ownership consisted, nor allowed a fixed and definite principle whereby the right could be enforced by public authority. A number of the very terms used above are of Arabic origin, and show that they do not belong to the ideas of the country. We have only to trace out the history of a village and its division of crops, as has been so admirably done by Mr. W. C. Benett, C.S., in his Gonda Settlement Report (1878, para. 83), to see how little a definite idea of private property had grown up.

Nor was the system of Government generally favourable to the development of property. The power of an Eastern sovereign is not limited, save by his own sense of right and by motives of prudence. As a matter of fact, he treated every one on the land, whether owner or tenant, exactly on the same footing. If he actually oppressed his revenue-payers beyond endurance, he killed the bird that laid the golden egg, and the people resisted or fled, as the case might be: *that* restrained him, but nothing else. It was custom, clearly defined and strongly held no doubt, that called the land which the clearer of the primeval jungle cultivated, his "wirásat" or inheritance; but that does not mean that the public mind could define, and public authority enforce, the distinction between the different classes of rights. Moreover, if the ruling power takes a revenue which is so large that it absorbs the 'rent' or the landowner's profit, then virtually there is nothing left worth calling a proprietary right in the land.

The same author is never tired of speaking of *our* Government as the "great landlord" taking rent from the actual proprietors—a position which it does not hold, nor has ever pretended to. The system of taking revenue from the land brings the Government, indeed, into close contact with the people; and Government, being the only great, at any rate the chief, capitalist in the country, undertakes many works of improvement, or grants advances to proprietors to make smaller improvements for themselves, and allows remissions of its demand in very bad times. But this it does for the welfare of the people, and for the better securing of its own revenue—not at

process of time, over the original villagers, a new interest grew up. In Bengal, for example, by the time British rule began, the villages were found to be under the complete control of certain powerful individuals whose title was incapable of any theoretical

all as a landlord. In no case is *our* revenue assessed so as not to leave a fair, if not a liberal, *rent* to the landowner.

If we look to Native sources of law, we shall find no idea of property *in our sense* of the word. In the law of Manu, for example (to go to Hindu sources), we find it stated that the land is the "property" of him who first cleared it (see Jones' translation, Chapter IX, v. 44 *et seq.*); but soon after we find that if the owner injures the land, or fails to cultivate it in due season, *the king* is to fine him heavily! The king's right to a share in the produce is accounted for by saying that it is the king's due in return for the protection he is bound to render to the cultivators; but that does not limit his practical authority.

The Muhammadan law does not give us any greater help. The sale of land is spoken of, so that some kind of exclusive occupation must have been contemplated; but then the Muhammadan law was never applied strictly in India. The Moslems, as conquerors, were obliged to take things as they found them, and be content to take their revenue, leaving the Hindu customs as they were, and not enforcing any theory of the law. The strict law contemplated imposing a land tax on conquered people, which is called "khiráj." The tax taken from believers was called by a different name, was lighter, and was only levied in respect of actual produce; whereas the khiráj was (like our revenue at the present day) levied on the land according to its capabilities, irrespective of its being fallow or productive. However, in time, the khiráj came to be taken in two different ways—in money, or in kind; in the latter case, of course, it could only be a share of the actual produce, and so was like the "believers'" tax. The khiráj levied in money was called "wazífa-khiráj," and was *par excellence* the form of tax to be imposed on conquered unbelievers. In this case the theory of the law would be, that the conqueror left the land to the conquered, being content with his tax, but resuming his right when the tax was not paid. It is said, however, that even when the share in the produce only was taken, the theory of the law still was, that the ruler was the proprietor of the land. This theory may have been of tribal and patriarchal origin, regarding in fact the Ruler, as Father of the Faithful, the head of the family of true believers, sharing the produce with them, and the land being, as it were, in his name. Whenever he commuted the share to an actual fixed tax, he gave up the relationship by which he was "proprietor." But here, again, is a theory totally unlike the Western one of ownership.

The controversy is very well summed up in the following extract:—

"The long-disputed question, whether private property in land existed in India before the British rule, is one which can never be satisfactorily settled, because it is, like many disputed matters, principally a question of the meaning to be applied to words. Those who deny the existence of property mean property in one sense; those who affirm its existence mean property in another sense. We are too apt to forget

definition perhaps, but whose power and influence were very great: there they were—a very stubborn fact indeed, and one not to be got rid of.

And then came the question to which I have already alluded— What was to be said for the lower strata of proprietary right? These could not be actually restored and the upper proprietary grade be reduced and ejected: how then were they to be dealt with?

The question would not, indeed, have been so difficult to dispose of if the different lower strata could always show proof of the rights they once held, or the practical immunities and privileges which they enjoyed. But in the great majority of cases the ancient rights had grown dim, and the means of proof were both uncertain and difficult to obtain. Ignorant agriculturists are the last people in the world to understand what is, and what is not, evidence. They may have long-cherished memories of a position that they think they ought to occupy, they may have strong moral grounds for claiming

that property in land as a transferable marketable commodity, absolutely owned and passing from hand to hand like any chattel, is not an ancient institution, but a modern development, reached only in a few very advanced countries. In the greater part of the world the right of cultivating particular portions of the earth is rather a privilege than a property,—a privilege first of the whole people, then of a particular tribe or a particular village community, and finally of particular individuals of the community.

"In this last stage land is partitioned off to these individuals as a matter of mutual convenience, but not as unconditional property; it long remains subject to certain conditions and to reversionary interests of the community, which prevent its uncontrolled allienation, and attach to it certain common rights and common burdens."

The author then goes on to remark on the important fact that conquerors, generally, cannot cultivate the whole land themselves and willingly leave the actual possession and cultivation of the land to the people who originally possessed it and are attached to it by many bonds. Hence we have a widely prevailing distinction between the levying of a revenue or customary rent for the land (asserted by the conquering State) and the privilege of occupying the soil. And in cases where the original cultivators had a recognised organisation like the village communities of Northern India, their hold on the land became such, that it is very natural to call it proprietary. (See *Sir George Campbell on Indian Tenures, in the Cobden Club Papers.*)

something, but what exactly that something is, may be extremely doubtful.

§ 11.—*Its limitations.*

The proprietary right recognised by the British law under these somewhat conflicting circumstances, is far from being absolute. But it is not only limited by the various sub-proprietary and tenant rights below, of which we have been speaking; it is necessarily limited in another direction by the Government rights above it.

All landed property, not freed by Government from payment, is held to be hypothecated to the State as security for its revenue[7]. And when land is sold under this lien, all encumbrances and mortgages on it are liable to be voided.

In some provinces all mineral rights are reserved also to the State[8].

The consequence is that the Indian "proprietary right" is a thing *sui generis*. Such a term is not used in English text-books. But I have nowhere found in Indian authorities any attempt to define this right. It has been suggested to me that the best definition would be "a transferable and heritable right to the rental of the soil." But there is, I think, notwithstanding the hypothecation to the State, a real though restricted right in the soil itself. The owner can claim compensation if it is taken up for public purposes, and that compensation will be higher according to

[7] It is so in practice, whether stated in Provincial Revenue laws or not, since the land is always saleable by order of the Revenue authorities for arrears of revenue, either at once or as the last resort, according to the law locally applicable. But the liability of the land as hypothecated is declared in so many words in Madras Act II of 1864 (section 2), and virtually so by section 56 of the Bombay Code, 1879, section 146 of the North-Western Provinces Act (XIX of 1873), and section 46 of the Burma Land and Revenue Act (II of 1876).

[8] In granting proprietary right to the Bengal zamíndárs this reservation was not made, but it is so in other cases, as expressly appears from several of the modern Revenue Acts (Panjáb Act, section 29; Central Provinces Act, section 151; Ajmer Regulation, section 3; Bombay Act V of 1879, section 69; Burma Land Revenue Act, section 8, &c.) The reservation is not mentioned in the Acts of the North-Western Provinces or Oudh, or in Madras. The subject is fully discussed in my *Manual of Forest Jurisprudence*, Chapter III.

the intrinsic value of the land, although the owner may have had no share whatever in producing or enhancing the value, as where his land has risen in price, owing to its proximity to a railway or to a town in which trade and population have largely developed. The land can also be sold and mortgaged. Under such circumstances, I do not think a definition which goes only to the rental, is sufficient. If we remember the Roman law definition of full proprietary right, we shall consider that the right in India is a *dominium minus plenum*,—an ownership limited in each case by certain circumstances which may not be the same in all parts of India, but among which the lien of Government as security for the revenue, is always one.

§ 12.—*Classification of proprietary tenures at the present day.*

In India at the present time, consequent on the super-position of proprietary interests in some districts, all proprietary tenures can be brought under one of four classes:—

I.—The Government itself may be the owner: as of waste land, which it does not sell out-and-out; of a village which has been forfeited for crime, or has lapsed for want of heirs, &c., or has been sold for arrears of revenue and bought in: here the cultivators become tenants properly so called; such estates are mostly found in Bengal, and but few in Upper India, the system there being unfavourable to the retention of such estates, as a rule.

Of course all public forests, large areas of available waste, and other public property may be brought under this class, but I am speaking of cultivated and appropriated lands, which would otherwise be in the hands of some other owner.

II.—The Government recognises *no* proprietary right between itself and the actual holder of the land (*i.e.*, it creates or allows no proprietary right in a whole area over the heads of the actual landholders). This is the simple form of raiyatwárí holding under the Bombay and Madras systems; and in Burma.

III.—Government recognises *one grade* of proprietor between

itself and the actual landholder. It settles for its revenue with this proprietor and secures the rights of the others by record.

IV.—Government recognises *two grades* of "proprietor" between the landholders and itself. This is the taluqdárí tenure[9]. In the Panjáb and North-Western Provinces the settlements get rid of this where possible, by dealing direct with the villages, and granting to the person possessing the taluqdárí or superior right a cash allowance: but the tenure exists in Oudh and elsewhere.

§ 13.—*Remarks on these classes.*

The full understanding of these forms of tenure cannot be attained till progress has been made in the study of the local development of the system in each province, but I hope that what is here said will serve to introduce, as it were, the terms which will be constantly in use in the sequel.

The *first* of these proprietary tenures is only occasional, and presents no difficulty in understanding it.

The *second* we shall meet with in Madras and Bombay, where we shall see how they grew out of the non-united village, whose constitution had never been seriously interfered with by the Maráthá and other conquerors, except in some special cases, where the second or double proprietary tenure arose in consequence.

The *third* of the classes finds its most perfect exemplification in the zamíndár of the Bengal permanent settlement[10], and in the málguzár of the Central Provinces, in both of which cases we find a new proprietor—the result of the revenue system, super-imposed on the original village-holding. The village communities of the North-West Provinces and the Panjáb are brought under this class, perhaps more theoretically than practically. Each landholder who has his share secured to him by record, or actually divided out to him in severalty (as is so often the case in these communities), is really owner of the share and pays the revenue on it, as

[9] There may be possibly more than two grades, but the case would be precisely analogous.

[10] Also in the permanently settled portions of Madras.

independently. as does the "registered occupant" of a severally numbered lot or holding under the Bombay system; but the form is not the same: the Government does not settle with the individual sharer for any revenue, but agrees with the whole village for a lump sum, and regards the whole village jointly as proprietor. The several holders are only bound to pay the share which custom or personal law directs; but that is a matter of internal concern to the village, not to the Government. As regards Government and the liability for revenue, the village body is the proprietor intermediate between the individual landholders or sharers and the State.

The *fourth* form is found in its most perfect condition in Oudh, the grades being (1) the taluqdár, (2) the village proprietary body—the individual landholder.

§ 14.—*Rights subordinate to "proprietary" rights.*

I have remarked that the proprietary right recognised in India is limited in many cases by the existence of inferior rights, which are the relics of former ownership once exercised, before the days when conquest, or the exactions of some State grantee or revenue farmer brought misfortune to the village and forced the owners to fly, or to stay on their own lands in the humble position of tenants. I remarked also that the British law had to find some just method of recognising and giving effect to such rights, and that this was a difficult problem because of the want of certainty which marked the evidence as to what the original position of claimants really was.

It is, of course, a question of local circumstance and history how far, in any given village, such rights exist, and if existent, to what extent they have survived; but in many of the districts it is not difficult to find cases in which the old owners appear, clinging desperately to petty holdings or privileges, which to their minds keep up (and do indeed afford evidence of) an original connection with the soil. Some of them have made terms with the new proprietor, and appear as his permanent lessees at favourable or fixed rents; others are treated as 'hereditary tenants;' but

whatever the form, the permanent tenure and the favourable terms are to be accounted for only as relics of an originally higher position and closer connection with the land.

It follows also, that wherever a settlement was made with, and the proprietary right conferred on, some headman, zamíndár, or other individual, over the village landholders generally, there were almost sure to be some others whose rights, though in a subordinate grade, have to be taken care of. The more 'artificial' the position of the proprietor acknowledged by the settlement is, the more will this be the case.

In no form of settlement derived from Bengal, has this ever been forgotten. True, for example, that it was the object of the Permanent Settlement to concede a high position to the zamíndár; but it was never intended, for one moment, to help him to crush out any existing subordinate rights. The early Regulations do not, indeed, bring the subject as prominently forward as the later ones, merely because it was taken for granted at first, that our law courts could afford sufficient protection; that directly any attempt was made to depose a subordinate right-holder, he would complain and receive a speedy remedy. It was also intended that all such tenure rights should be registered. The Judges of the High Court of Calcutta who discussed the history of Bengal tenancy in the great rent case of 1865, all agreed in this, that, though the "zamíndár" was recognised as proprietor, his right was by no means unlimited with regard to the "raiyats" under him[1].

The great difficulty has always been to know how, logically and equitably, to define and place in due position, the rights which now appear in the lower "strata" of proprietary or quasi-proprietary interest.

In general the question has been solved by admitting some of the rights to be of proprietary *character*, but secondary *degree;* and declaring the others to be *tenancies*, but with privileges as regards

[1] "The Regulations," said one of them, "teem with provisions quite incompatible with any notion of the zamíndár being absolute proprietor." (Bengal Law Reports, Supplementary Volume of Full Bench Rulings)

non-liability to ejectment, and with a limitation of rent charges, which is the necessary corollary to fixity of tenure. In practice it has not been always easy to draw the line between the two, with uniform accuracy; and our future enquiry into tenures will show some differences in this respect, which it is, however, very easy to account for.

§ 15.—*Sub-proprietors.*

One mark of the "proprietary character" has always been that the holder pays nothing but the Government assessment; unless indeed by custom, he also pays some feudal or other dues to a superior (which are hardly of the nature of rent). Another is that the holding should not only be heritable—for that a fixed "tenancy" always is—but also freely *alienable* by gift, sale, or mortgage.

Where all these features are observed, the tenure would be of the proprietary class, and spoken of as an "under-tenure," or "sub-proprietorship," and in the vernacular as "málik maqbúza," or other term which carries with it the indication of a "proprietary" character[2].

Who were the persons entitled to this position, depended, as I have already remarked, on the facts and on the history of the estate. In Bengal, no doubt, in a large number of instances, those who—directly the zámíndar's position was recognised by law—became "tenants" or "raiyats," were originally the soil-owners of the decayed and forgotten village groups. Among these, the most powerful and more well-to-do succeeded in securing some permanent position under the zamíndár; and although such position was designated by a new title derived from Mughal law or revenue institutions, still it practically secured something like the old landed interest.

In provinces where the village communities survive as the proprietary body, or where other forms of superior proprietorship have

[2] Extending most commonly to the individual holding only, but in some cases (as in the Central Provinces) extending to the whole village, which may be the subject of a joint sub-proprietary right under the "málguzár" proprietor.

been recognised, it will be remnants of original tribes, conquered by the ancestors of the present owners, descendants of State grantees, purchasers, settlers, and others, who constitute the sub-proprietors.

But it is obvious that these rights may be very various in character and extent. On the one hand they may rise to a right distinguishable only by insignificant features from the upper proprietary right, or on the other, may be so little proprietary as to be practically undistinguishable from "tenancies."

§ 16.—*Method of distinguishing different kinds of right.*

The early law of Bengal did not lay down any principles, nor did it prescribe any authoritative enquiry into and record of the actual incidents and customs of such rights. As I have observed already, it was thought that the easy and obvious method for solving a dispute was to go to court and prove the facts. But even if the courts were less distant, their procedure less costly, and their language less strange to the ignorant peasantry, the courts themselves had no guide, either as to the incidents of tenure to be proved, or the consequences of them when proved. A record of facts, such as could be prepared only in the field, by the Settlement Officer, was therefore as much needed as a guide to the courts as it was for the protection of the people.

How this difficulty was gradually overcome in the permanently settled districts, will be further explained in the chapter specially devoted to Bengal. With regard to other provinces, where the system of Bengal was pursued in a modified form, the law afterwards enacted that the Settlement Officer was to determine who was the actual proprietor to be settled with; and that done, he was to protect the inferior proprietary right, if necessary, by a "mufassal" or sub-settlement, and in any case, by a practically authoritative "record of rights."

In many cases, however, the necessity of providing for inferior rights does not stop with the recognition of sub-proprietors entitled to a sub-settlement, or to sub-proprietors of holdings merely recorded as such. It is obvious that, on investigating the facts in

any particular locality, the evidence in favour of former rights may be stronger or weaker, till at last it is very difficult to say whether the right to be allowed, can properly be recorded in the proprietary class at all. Practically, when it is weak, but still recognisable, the claimant is more conveniently treated as a *tenant* with privileges. And this leads me to say a few words on the subject of tenant right.

§ 17.—*Tenant Right.*

All tenant right in India arises in one of three ways. *First*, I may place the case just alluded to, of right that may really have been proprietary at some former time, but is now so faintly visible that a privileged tenancy is practically the most reasonable position that can be assigned to it. *Secondly*, there are cases of real "tenancy," but where th custom of the country, and the general feeling, assign a privileged position to the tenant. A good example of such a case is to be found in the case of village communities where the "proprietary body," being unwilling or unable to do all the work of clearing the jungle and founding the village, called in some others (possibly of a different caste or class) to help them. These persons were, of course, privileged,—in some cases so much so that some settlements have assigned them the place of sub-proprietors: but at any rate their tenure was hereditary; and the rate of rent, if it was extended at all beyond the amount of the Government revenue, was fixed and nominal. The *third* case is where our law has stepped in and provided that any tenant who has continuously held the land for twelve years (which in earlier days was the usual Indian "period of limitation") shall have a right of occupancy, *i.e.*, shall not be removable as long as he pays his rent, and shall only have his rent enhanced under certain rules and on certain fixed grounds.

The first two classes are purely natural; and I am not aware that the propriety of protecting them by law has ever been called in question. It is true that the difficulty of drawing the line between rights of this class and those previously called "sub-

proprietary" is such that there may have been some variety of practice; but this does not affect the question of admitting that the right is to be recognised. But the third class has given rise to much difference of opinion. It is perhaps needless to remark that this class of twelve years' tenants was not arbitrarily created or in pursuance of a bare theory. It arose in the North-Western Provinces and was copied[3] in Bengal.

§ 18.—*The twelve years' rule—Bengal.*

In Bengal such a rule would readily commend itself. It has been explained that the zamíndár acquired his position over the heads of the original soil-owners; so that a large proportion of those who were now "tenants" once really enjoyed permanent rights in the land. But under the influence of the Mughal rule their position was in effect not different from others who were really tenants. For in those days no question of eviction as regards the actual *cultivators* ever arose. There was no competition for land. The competition was to get and keep men to till the soil. All that were on the land, whether originally ancestral proprietors or not, were retained as a matter of course, and all paid the customary rent. In course of years the population increased, land became valuable, and then competition became possible. Then for the first time the question arose, could this or that tenant be turned out, and how could his rent be raised? The answer was to be found in searching for the facts; in the course of that enquiry the original position of some of the raiyats came to notice as being the real original village proprietors, while others appeared to have an origin which really depended only on the contract of the parties. It was then decided that it would be only equitable to confirm the position of those in whose favour these special circumstances appeared. But it is not always easy to prove facts which are nevertheless true. The peasantry were too ignorant to preserve evidence of their rights; and hence the rule was invented as one

[3] See Report of Select Committee on the Rent Act (X of 1859).

likely to do general justice, that a person who had held for twelve years—the then usual period of limitation—should be saved from *the burden* of further scrutiny and declared irremovable. And *as a right* of occupancy without a regulation of rent would be valueless, certain rules were laid down as to enhancement.

Looking to the facts of Bengal tenure, there is no reason to suppose that the twelve years' rule was unjust, or that it unfairly limited the rights and profits of the proprietors; indeed, there has been of late considerable apprehension that the protection to the cultivator is not sufficient[4]; that considering the immense difference at the present day between the permanent assessment of the estate and the actual rental of it, the people who pay those rents ought to share much more largely than they do, in the benefits which arise out of the land.

§ 19.—*In other Provinces.*

But even in the North-Western Provinces,—where this rule was first invented, and where the argument stated in the last paragraph could less commonly be applied, there was still another ground urged; and that was that *all* tenants, if of reasonably long standing, and if *resident* on the land, ought, according to the true and ancient custom of the country, to be protected from eviction at the pleasure of the landlord. This extension of the twelve years' rule is obviously more open to question, and consequently the general introduction of the rule into other parts of India has given rise to a fierce controversy.

§ 20.—*The case as stated on both sides.*

There have been always officials ready to take either side, since on either side a plausible argument may be advanced.

Those who favoured the landlord's view would urge that it was unfair to the zamíndárs and other proprietors now saddled with the responsibility, strict and unbending, for a revenue that was to come

[4] At the time I am writing a special Commission has just investigated the subject, and a draft law for Bengal is under consideration.

in good years and bad alike, to tie their hands, to refuse them permission to get the full benefit of their lands by creating an artificial right in their tenantry; such a rule would be to virtually deprive the landlord of the best share of his proprietary rights. If it was wise of Government to recognise the proprietary right at all, it must be wise also to recognise the full legal and logical consequences of that right. True it might be, that in old days tenants were never turned out, but that was the result of circumstances, not of right; and if the circumstances have changed, why not let the practice of dealing with tenants alter too? The proprietors are the people we designed to secure, in order to make them the fathers of their people, to whom we looked for the improvement of the country at large, and for the consequent increase of the general wealth. Why would we doubt that they will act fairly in their new position?

On the other side the advocate of the tenant would reply: the new landlords confessedly owe their position to the gift of Government; why should they get all? why should not the benefits conferred be equally divided between the raiyats on the soil and the "proprietors"? The raiyats are the real bread-winners and revenue-makers, more quiet and peaceable, less liable to political emotions, and more interested in the stability of things as they are. Many of the tenants we know to have been reduced to that condition from an originally superior status. And even if the tenant had no such original position, as far as his history can be traced, still the custom of the country is all in favour of a fixed holding. If a powerful man ousted a cultivator, it was by his mere power, not by any inherent right, or that the public opinion would have supported him in so doing. But as a matter of fact no cultivator ever was ousted; he was too valuable. In the rare cases in which he was ejected, it was either because he failed to pay or to cultivate properly (which is still allowed as a ground for ejection), or else it was to make room for some favoured individual, which of course was an act of pure oppression: why should not the law still protect the tenant from such evictions?

The question is in truth not one which can be theoretically determined, because the idea of landlord and tenant, as we conceive the terms, and the consequences which flow from it, have no natural counterpart in Indian custom.

We have the double difficulty to deal with, the vast number of "tenants," who have a valid claim to be considered, because their position does not really depend on contract, and also the case of tenants whose origin is not doubtful, but whose position has been seriously affected by the new order of things—a competition for land instead of a competition to get tenants and keep them. All we can do is to make the best *practical* rules for securing a fair protection to all parties.

The principle of Act X of 1859[5] was adopted, reasonably enough as regards the zamíndárí estates that were settled under the old Bengal system, but more doubtfully as regards the North-Western Provinces, where the village communities survived. In the Central Provinces Act X was put in force, but under certain special conditions, which will be alluded to in the sequel. In the Panjáb and in Oudh it has not been adopted. There it was sufficient to provide for the special case of those tenants who had a "natural" or customary right to be considered hereditary.

Even in the Panjáb, however, the tenant-right controversy was for a long time carried on.

In the provinces where the Government deals directly with the occupants of the land, tenant right has given no trouble. But of course tenancies exist. A man may contract to cultivate land as a tenant-at-will or he may have something of a hereditary claim to till the land, as much under a raiyatwárí system as any other. But the question of subordinate rights never becomes as difficult of solution in such countries, as it does in those where the recognised proprietor is a middleman between the cultivator and the State.

[5] This Act is now generally repealed, though it survives in certain districts; but the twelve years' rule has been retained in the Acts which superseded it in the different provinces.

SECTION III.—LAND TENURES OF A TEMPORARY CHARACTER.

§ 1.—*Shifting cultivation.*

An account, however elementary of Indian land-tenures, would be incomplete without some notice of a customary holding of jungle land which is widely prevalent in parts of India, but which is of such a nature that it is very doubtful whether the term 'land-tenure' can with propriety be applied to it. I allude to the practice of temporary or shifting cultivation of patches of forest, which has in some districts proved an obstacle, or at least a source of difficulty, in the way of making arrangements for the preservation of wooded tracts as forest estates, a work which modern science recognises as essential for almost any country, and especially a great continent like India with its climatic changes and seasons of drought of such frequent recurrence.

In the jungle-clad hill country on the east and north of Bengal, in the Ghâts of the eastern and western coasts of the peninsula, in the inland hill ranges of the Central Provinces and Southern India, there are aboriginal tribes who live by clearing patches of the jungle, and taking a crop or two off the virgin soil, after which the tract is left to grow up again while a new one is attacked.

This method of cultivation seems to be instinctive to all tribes inhabiting such districts. It seems to be the natural and obvious method of dealing with a country so situated.

The details of the custom are of course various, and the names are legion. The most widespread names, however, are "júm" in Bengal[6], "bewar" (often, but incorrectly, dahyá) in the Central Provinces, "kumri" in South India, and "toung-yá" in Burma.

In all cases the essence of the practice consists in selecting a hill side where the excessive tropical rainfall will drain off suffi-

[6] "Júm" is the general name used in official reports, but in reality this name must be entirely local. In fact no one name can be applied. In the Garo hills, in Chittagong, in Goálpára, in Sontália, and no doubt in every other district where this method of cultivation is practised, there is a different local name.

ciently to prevent flooding of the crop, and on which there is a sufficient depth of soil. A few plots are selected and all the vegetation carefully cut: the larger trees will usually be ringed and left to die;—standing bare and dried, there will be no shade from them hurtful to the ripening crop. The refuse is left on the ground to dry. At the proper season, when the dry weather is at its height, and before the first rains begin and fit the ground for sowing, the whole mass will be set on fire: the ashes are dug into the ground and the seed is sown,—usually being mixed with the ashes and the whole dug in together. The plough is not used. The great labour after that consists in weeding, and it is the only labour after the first few days of hard cutting, to clear the ground in the first instance, are over. Weeding is, in many places, a *sine quâ non*, for the rich soil would soon send up a crop of jungle growth that would suppress the hill rice or whatever it is that has been sown[7].

A second crop may be taken, the following year possibly a third, but then a new piece is cut, and the process is repeated.

§ 2.—*Nature of right to which such practice gives rise.*

When the whole of the area in the locality judged suitable for treatment is exhausted, the families or tribes will move off to another region, and may, if land is abundant, only come back to the same hill sides after twenty or even forty years. But when the families are numerous, the land available becomes limited, and then the rotation is shortened to a number of years—seven or even less—in which a growth, now reduced to bamboos and smaller jungle, can be got up to a sufficient density and height to give the soil and the ash-manure necessary. In its ordinary form, this method of cultivation may give rise to some difficult questions. It obviously does not amount to a permanent, adverse occupation of a definite area of land; nor does it exactly fall in with any Western legal conception of a right of user. In some cases,

[7] But this is not always the case, where the hill land has long been subject to this treatment, or where the soil is peculiar; in the Garo hills, I am told, weeding is not required.

it may be destructive of forest which is of great use and value; in others the forest may be of no use whatever, and this method of cultivation may be natural and necessary. The progress of civilisation and the increase in the population always tend to bring this class of cultivation into the former category, and then it is very difficult to deal with. It is impossible not to feel that whatever may be the theoretical failure in the growth of a strict right, the tribes that have for generations practised this cultivation from one range of hills to another, have something closely resembling a right; they have probably been paying a Government revenue or tax—so much per adult male who can wield the knife or axe with which the clearing is effected—which strengthens their claim to consideration. In creating forest estates for the public benefit, the adjustment of "toung-yá," "kumri," or "júm," claims has now become a matter of settled and well-understood practice. In the Western Ghâts it is becoming a subject of difficulty[8], but the discussion of the question would be foreign to my present purpose, which is merely to describe what is in fact a form of land occupation or quasi-tenure.

[8] Already, in the Konkan, whole hill sides have been reduced to sterility, while the soil washed by the heavy monsoon rains off the bare hill side, has silted up and rendered useless, streams and creeks which were once navigable. The difficulty is that the tribes are always semi-barbarous, and the task is to induce them to overcome their apathy and take to permanent cultivation. Unfortunately, sympathetic officials, properly alive to the necessity of kindly treating these tribes, are usually totally blind to the real danger of destroying the Ghát forests, or what is worse, professing to believe it, the belief has no real hold on them. To abolish this destructive cultivation, serious and sustained effort is necessary; to get the people to settle down, and to procure for them cattle, ploughs, and seed-grain, requires liberal expenditure. It is difficult to find officers who have the time or the zeal necessary for the first, and financial difficulties are likely to be in the way of the second. An easier course is to draw harrowing pictures of the suffering caused to the tribes by stopping their ancient cultivation, and to denounce the efforts of the Forest Administration as being harsh and without recognition of the "wants of the people." It is unfortunate that the very forests at the head-waters of streams, with dense growth and steep slopes, which forest economy most imperatively calls on us to preserve, are the very tracts in which this temporary cultivation is most insisted on.

§ 3.—*Peculiar customs in Burma.*

Mr. Brandis, Inspector General of Forests to the Government of India, has been the first to notice and describe a curious system of "toung-yá" cultivation found in Burma (in the hills between the Sittang and Salween rivers), where the pressure of tribal populations has confined each village or group to certain definite local areas. In these the forest is most carefully protected from fire, so as to favour the restoration of the jungle as much as possible, and the whole is worked on the toung-yá method, in a peculiar and well-devised order of cutting, which is determined strictly according to local custom by the tribal council. This will be more fully described in the chapter on Burma.

Here we have this method of cultivation developed in a manner which must in time be recognised as a regular system of land-holding.

I will now pass on to sketch the first beginning of our revenue dealings with the people which took place in Bengal, and show how the other systems gained a footing in different provinces.

As in doing so I must almost at the outset allude to village lands and village owners, State grantees, and State revenue collectors, I trust that the brief sketch of tenures now given will have been sufficient at least to make the passages in which such allusions occur intelligible.

CHAPTER IV.

A GENERAL VIEW OF THE DIFFERENT LAND-REVENUE SYSTEMS IN INDIA.

SECTION I.—INTRODUCTORY.

§ 1.—*The rationale of Indian land-revenue.*

EVERY one who has been in India, even for a short time, is aware of the fact that a large portion of the Government revenue is derived from the land. In all cases that revenue is now taken in money. Under the earliest Hindu Rulers it was, and in some Native States still is, taken in kind. But whether it is grain or money, the principle is the same. A portion of the produce of every field belongs to the king;—unless the king chooses, as a favour, or as reward for services, or to support some religious institution, to forego his claim[1].

I do not propose to discuss the theory of this method of obtaining a State income. It may be admired or reprobated; but at any rate it has this advantage, that it is universally understood by the people, and has the sanction of absolutely immemorial custom—facts of no little practical importance in a country like India.

It is therefore, when fairly assessed[2], realised without difficulty; and there is certainly no method of taxation by which, under the

[1] In which case there is a revenue-free, or "lákhiráj," grant of some kind.

[2] There have, no doubt, been many instances (almost, I may say, as a matter of course) in so vast and intricate an operation as our land settlements, in which assessments have proved excessive and have resulted in much distress; but over-assessment always can be, and always is eventually, remedied. There are also other difficulties, such as that which arises from the unbending regularity of the demand, which may cause the improvident to get into the hands of money-lenders. These, however, are questions of social economy; they have nothing to do with the revenue itself.

existing conditions of the provinces, we could raise an equal amount of revenue with equally little trouble or popular opposition.

Nor do I propose to enter on the question, how the State comes to be entitled to take a share in the produce of land. In the last chapter I sketched the position of the Hindu Rájas of early days, and indicated the changes induced by subsequent conquest. I endeavoured also to show that it is idle to discuss the question whether it is as paramount owner or landlord of the soil in India, that the State takes its share[3]. Such a question is not capable of solution, for the simple reason that at no time did the ideas which we of the West associate with the term "landlord" or "proprietor," enter into the legal system of the country, either Hindu or Muhammadan. Even in the West, the idea of "property," as we now have it, is one of gradual and slow development.

The State at all times claimed a share (often a very large share) of the produce, and at all times granted and disposed of waste lands as it pleased: often, too, it has exercised very wide powers in the location and ejectment of the actual holders of the soil. These powers, had they been exercised in Europe, might have been held to be only explainable on the ground that they were the act of a "*dominus*," or owner; but having been exercised in the East, we cannot apply these ideas to them. In the absence of any *Eastern* criterion of proprietary right, we can only say that the people did what was the custom, and the king did what he chose—at any rate, within those limits which the nature of things sets to the exercise of arbitrary power.

From the very first our Government has wisely avoided theorising on the subject. The earliest Regulations of 1793 contented themselves with asserting just so much, and no more, as would serve for a practical basis of the system they formulated: namely, that "by

[3] In Regulation XXV of 1802 of the Madras Code it was asserted that the Native Government "had the implied right and the actual exercise of the proprietary possession of all lands whatever," and this was still more clearly stated in the Regulation XXXI of 1802, since repealed, as being vested in the Government of Fort St. George "by ancient usage of the country." The proprietary right was then *conferred* by Regulation XXXI of 1802 on all zamíndárs and other landholders.

ancient law the Government was entitled to a share in the produce of every bíghá of land," that share to be fixed by itself[4].

The only other rights which Government has reserved, which may, if the reader pleases, be traced to a theory of original proprietorship, are (1) that Government in recognising or "conferring" a proprietary title (in the modern sense) on the landholders, reserved to itself the right to secure the practical interest of the other classes of persons interested in the land, by making regulations for the protection of raiyats, under-proprietors and actual cultivators of the soil[5]: in other words, that Government had power to distribute the rights in the soil and in its rental as it thought fit, consistently with facts and with the general principles of equity; (2) that Government has the right to dispose of waste lands not occupied by any one; and (3) that it has also the right to sell all lands (in the last resort) to recover arrears of revenue which cannot be got in by other means.

There are other Government rights of course,—the right to escheats, the right to mines and quarries (when not specially included in the grant of proprietary right to others), for example, but these do not concern my present purpose.

§ 2.—*Early practice in respect to land-revenue assessment.*

Under the Native Governments, the State share in the produce, whether represented by an actual share of the grain, or by a money equivalent, came to be fixed, like everything else in India, by custom. But the custom was from time to time affected by the necessities of the ruler, and by the interference of the agents whom he employed to assess or realise his revenues.

In India, as we have seen, the village is, as a rule, the natural unit of land-grouping. The first form in which the revenue was

[4] See preamble to Bengal Regulations XIX and XXXVII of 1793. The same phraseology has been re-adopted in modern Acts—for example, in Act XXXIII of 1871—and it holds good for all revenue systems. The Bombay Revenue Code (section 45) makes the same declaration.

[5] See section 8 of Regulation I of 1793 (first clause).

collected was by simply dividing the grain-heap at the threshing-floor, between the village servants, the cultivator, and the Rája. This I shall describe more in detail in a subsequent chapter. When this stage was passed, money revenue was assessed by valuing the Rája's share of the grain at current rates. And there were various transitional stages, caused by the difficulty of superintending the division of grain-heaps over a vast number of separate villages, which resulted in substituting an appraisement of the crop and fixing an estimated amount to be made good, and so forth. But omitting these stages, and coming to the time when the payment of revenue in cash became tolerably general, the practice of assessment varied according to circumstances. If the village was "joint," a lump sum was fixed for the whole estate, leaving the sharers to distribute the burden according to their own laws and customs. If it was a "non-united" village, either each holding was assessed, or the village headman distributed a lump assessment over the holdings separately, according to custom.

Under the strong government of Akbar, there was something not unlike a settlement of our own day. The ámil, or local superintendent of revenue in a pargana (or revenue sub-division of a district), collected a certain share of the produce, or the money rates assessed at the settlement. In later times, the revenue officers added some further payments as "cesses" for particular purposes, and the village distributed the burden of these among the different landholders, through its managing committee or headmen, according to ancestral shares or according to local custom.

§ 3.—*Native methods of revenue collection.*

The necessity for a revenue as large and as steady as possible is one that presses not only on a Mughal Emperor and his Deputy, but on every Oriental Government; and the more so as it seeks to maintain large armies for foreign conquest, and aims at the construction of large public works,—roads, canals, and 'saráis' (or travellers' halting places)—which are usually the objects to which Oriental Governments turn their attention. As long as the Govern-

ment was firmly administered, it attained this object best by a moderate settlement and a fixed respect for the landholding customs of the country.

But the time always came when the dynasty began to decline, and then wasteful expenditure of every kind became prevalent; the necessities of the king became greater, and his hold over his agents less. Then it was that the revenue was augmented by arbitrary exactions; the original village-owners were ousted or fled. Revenue farmers got hold of the village, and either got in new tenants or mercilessly rack-rented the old village-owners. The revenue contractor got as much out of the villages, and paid as little to the treasury, as he could. The rates of the original settlement (whether Akbar's in Hindustan, or Malik' Ambar's in Central India) had become customary, and were consequently well known; but they were added to by cesses till a compromise was effected, and the result became in its turn the customary rent. In course of time new cesses were added and a new compromise effected, and so on. To what lengths such a system was carried, and in what different forms, depends very much on the locality and its institutions, and on the character of the Native rule. In Northern India, the villages were strong and often managed to hold their own; if the land even changed hands, the village institutions survived and did not form, or become absorbed in, some different kind of estate. In other parts, as in Oudh, "taluqdárs" arose as the outcome of the revenue difficulties of the State. In Bengal, again, another plan of revenue-collecting received a wide development which was probably facilitated by the complete decay of the village institutions. However this may be, it is always the decline of the Native Government that introduces confusion, and that leads to results which have largely affected the revenue system introduced by the British Government.

Section II.—The Bengal System.

§ 4.—*The rise of the zamíndárí system.*

The great Province of "Bengal, Bihár, and Orissa" was the first to come under British rule, and it happened that these terri-

tories exemplified in a striking manner the general course of events which I stated in the last paragraph. The Mughal Government had ceased to be able to control its local agents efficiently, and the revenue suffered accordingly. In time, however, the general corruption of the revenue officials and the lack of power to control them, almost naturally led to the invention of a system whereby, instead of trying to make the collections through the agency of village officers who had ceased to have any authority, or to keep detailed accounts with local farmers and ámils who were perpetually on the watch to embezzle what they could, the State appointed certain great managers or agents, who became responsible for the realisation of the revenue of large tracts of country. An official so appointed was called a "zamíndár[6]."

[6] I hardly know whether it is best to call them "revenue agents" or "revenue farmers." On the whole I prefer the former term (though it sounds awkward) because, as a rule, they did not bid or bargain for certain terms, but the revenue of the zamíndárí was known by custom, as the result of the old "ámili" assessments; and the zamíndár rather took the responsibility (for a certain remuneration) of realising the assessment, than farmed the revenues. When the Government grew more and more corrupt and feeble, the usual consequences of declension rapidly developed. Regular revenue management under State control gave way, and the zamíndárís were put up to auction and sold in the most reckless fashion.

The reader may be put on his guard at the outset, as to the meaning of the vernacular terms used in speaking of landed interests. Zamíndár is a term likely to confuse him. In speaking of a Bengal settlement, zamíndár is the revenue official (made "proprietor" under the Bengal system) who received a "sanad" or written commission of appointment to realise and make good to the State, less certain deductions for himself, the revenues of a large tract of country.

In other parts, zamíndár ("holder of land") has come to mean the complete and exclusive proprietor of land generally; and it is so used in speaking of tenures, as, for example, "zamíndárí tenure," where we mean that the land has one man (or one body of men) as its owner. Still more generally used, zamíndár is colloquially applied to any one who gets his living from the land. If you meet a man going along a village road and ask who he is, he will probably answer—"I am a poor man, a zamíndár."

The term "ra'íyat" (raiyat) also is not precise; it means a tenant—one who pays rent to a landlord—in such phrases as the "raiyat's rights must be protected;" or it means the actual cultivator, in such a phrase as "a raiyatwárí settlement."

In its etymology it means simply "protected;" so that any inferior may colloquially describe himself as a raiyat,—"your humble servant."

Asámi is a term of the same kind. With reference to a landowner, it means his tenant; but colloquially, and speaking to a superior, it may be used by an owner of

The Government fixed a certain revenue which the zamíndár was expected to realise from a given tract of country or "estate"—often of great extent—and allowed him a tenth as his personal remuneration and some further allowances for special purposes.

In the earlier stages of the system the zamíndár was still, to a considerable extent, controlled by the superior revenue officers of the State; it was the duty of the latter to see that the people were not oppressed, and that the collections were duly accounted for to the treasury. But as the Government fell further into decline, the power and independence of the zamíndár grew apace. The late Mughal rulers now and again made desperate efforts to repress or even to get rid of the zamíndárs, but always without success.

The institution was, in Bengal, like a plant which, when it has once taken to the soil, there is no getting rid of. The zamíndár became not only indispensable to the revenue system, but he gradually took such hold on the tract of country under him, that it grew more and more, as time went on, to be looked on as "his estate," and he became, what we must call for want of a better term, "the proprietor."

In fact, we have here a most striking instance of the way in which the land-revenue systems of conquering Governments tend to modify the land-tenures.

§ 5.—*Progress of the zamíndár.*

Let me then briefly trace the progress of this Bengal institution, which so rapidly grew at the expense of the old village soil-owners. The zamíndár was either a man of local influence, a court favourite, or a man who once was a paid revenue officer. But very often he was one of the local Rájas or Chiefs, who had been conquered or reduced to vassalage by the Muhammadan power. That the zamíndár had originally anything like a proprietary right cannot be asserted, for

himself—he is your "asámi." Etymologically it means only "such an one," for ásám is the plural of *ism*, "a name." The use of these terms may afford a significant hint how little our inherited and developed notions of a "landlord" and "tenant" have any real equivalent in Eastern speech.

this chief reason, among many, that he did not, in theory, get one farthing of rent from any one. He was bound to pay in the *whole* of what he realised from the landholders, less only the percentage, and the perquisites, which the State allowed him for his trouble and responsibility. On the other hand, the zamíndár had many ways of getting money out of the people, and many ways of getting hold, first of one field and then of another, and so gradually improving his position, *till he became* the virtual "owner" of the whole estate. A detailed account of this process I must reserve till I come to speak more particularly of land tenures in Bengal.

When the institution of zamíndárs was first originated, this conclusion was not foreseen, far less intended. At first, as I said, the zamíndár was strictly controlled. The Government maintained the official qánúngo or pargana officer to supervise and control him. Over the qánúngo, again, was the "karori" of a "sirkár" or district, or the "ámil" of a "chakla,"—according as one or other form of fiscal division was in vogue. But the same power which enabled the zamíndár to override the original rights of the village landholders enabled him soon to reduce the pargana officer to being his mere creature. When our rule began, the qánúngos existed only in name; the pargana divisions had fallen into disuse; the "zamíndár" (and the division of the district into zamíndárís) was everything.

§ 6.—*Jágírs.*

In some parts of the country there were no zamíndárs, but the right of collecting the revenue was granted to noblemen or military retainers for the support of certain military contingents. This was especially the case when the country was remote, and force likely to be required in collecting the revenue. The grantees were called "jágírdárs:" they usually were allowed to take the whole revenue themselves, and rendered an equivalent to the State by maintaining peace in their district, and by bringing to the royal standard a certain prescribed force properly equipped. In the decadence of royal power, however, this condition often fell into abeyance, and the jágírdár absorbed the lands in his jágír just as the zamíndár

did on his estate. In a few instances grantees, called taluqdárs, acquired a similar though less dignified position. In Oudh, as we shall see, the institution of taluqdárs became exceptionally developed.

§ 7.—*Early management of the East India Company.*

To the Native rule in its last stage of decrepitude, succeeded the government of the East India Company; but at first, whether owing to want of experience or other causes, no attempt was made to displace the existing system. Even when in 1770 the Company's servants did attempt to take the revenue management into their own hands, they fared no. better. They tried annual settlements and farms: they put in managers of the "estates" and ousted many zamíndárs, but the revenue came in irregularly and much misery and disorder resulted. The task of improvement was not an easy one; but it is a fact worthy of notice, that even at that early date, the zamíndár had attained a position so far removed from that of a mere official, that he was able to complain loudly of being ousted, as having long since acquired a hereditary and quasi-proprietary position. This is recited in detail in the 24 Geo. III, Cap. 25, section 39, and it was the declared object of that law to *restore* the zamíndárs under such guarantees as would prevent their oppressing the "tenantry."

Consequently there was the double call to have recourse to the zamíndár: first, there was the actual *de facto* position which he had acquired; and next, there was the absolute necessity for proceeding on the plan, which had by that time been in existence for several generations, of finding some person who would be directly responsible for the revenue of each suitable group of villages.

The only alternative would have been to devise a system of dealing with each village or of collecting a revenue direct from every petty landholder. Such a system, at that date, and under the existing circumstances of Bengal, could never have even suggested itself; it was wholly foreign to the Native system of government

which preceded ours, and there was no kind of official machinery by which such a plan could have been worked[7].

The zamíndár being thus established as the necessary and natural intermediary between the State and the cultivator, the final step was to secure and declare his legal position.

Now the first object of the Government, as regards its own interests, was to secure its revenue and get it paid as regularly as possible. It was then considered that the best way to attain this object was to settle the revenue demand, at such a moderate figure that it could be paid in good seasons and bad alike, and to declare that this moderate sum was no longer liable to annual or other frequent variations, but that it should be fixed either for a term of years or for ever.

But this was not enough; the person who became responsible for this fixed demand to be paid with continuous regularity, must be secured in such a position, with reference to the land itself, that he might be willing to improve it and to expend money on works of embankment, irrigation, drainage, and the like, which would diminish the risks of failure from bad seasons, and thus at once secure the regular payment of the State share and enhance his own profits. This object required some legal action to be taken with reference to the actual tenure of the revenue-payer. He must be no longer liable to be turned out at the caprice of the Government officers, he must be attached to the land, be permitted to raise money on the credit of it, to sell it if he pleased, and pass on his interest in it by succession to his heirs.

But what was all this but to recognise a *proprietary right* in the land, and to vest it in the person who engaged to pay the revenue? The revenue share was to be moderate, and subject to no enhancement for the term of engagement; the surplus was to

[7] That such a system should afterwards have been thought of and put into practice in Southern India does not in the least invalidate what is said in the text of Bengal. Revenue systems are always the outcome of existing facts and institutions. While, for example, in Bengal the "raiyatwárí" idea was an impossibility, in Bombay the Maráthá system not only rendered it conceivable, but left it in actual existence.

be solely enjoyed by the engagee; he was to be at liberty to sell, mortgage or let, or give away the land,—to do what he liked with it in short, and to pass it on to his heirs and successors: why then he was *owner* of the land! The short word "owner" expresses or includes all this, according to our Western ideas[8]. Thus the practical history of the zamíndár's growth, and the logical necessities of the British system, both tended to the same result.

§ 8.—*The rationale of the Bengal system developed.*

The conclusion at which the Government then arrived, was that the revenue engagee must be declared the owner, and whoever is practically owner is, *vice versâ*, the person to be selected to engage for the revenue.

This principle now fixed in the every-day language of the people, wherever the Bengal settlement or a derivative system, has taken root. The terms "revenue-payer" and "owner" have become synonymous. In Upper India, to say that a man is a málguzár (literally, a payer of revenue) is to say that he is a proprietor of the land on which he pays; and to say that he "pays four annas revenue" (*i.e.*, four annas in every rupee,—one-fourth of the whole sum assessed) is exactly the same as to say that he is proprietor of one-fourth of the estate[9].

The idea, then, of recognising the zamíndár as owner of the land, in order to secure the revenue and promote the well-being of the country, is at the basis of the Bengal revenue system. Accordingly, in the Bengal Regulation II of 1793, we read that one of the fundamental measures essential to the attainment of the object of Government was to declare the property in the soil to be vested in the landholders[10]. This property was "never before formally declared to be so vested," nor were they (the landholders) "allowed to transfer such rights as they did

[8] I have already discussed in the previous chapter the nature of this proprietary right or ownership, and stated how it was limited: see page 86, *ante*.

[9] Thomason's Directions, para. 79 (= 94, Panjáb edition).

[10] Here we see the "zamíndár" = holder of land, literally translated.

possess, or raise money on the credit of their tenures, without the previous sanction of Government[1]."

§ 9.—*It is modified in being applied to other provinces.*

One of the first questions, therefore, that a Land Revenue Settlement is concerned with under this system (or its derivatives) is, who is the proper person to recognise as proprietor, and to admit to engage for the Government revenue? It will be seen in the sequel, that the different conditions and existing facts of landholding in Bengal, in Orissa, in the North-Western Provinces, and afterwards in the Central Provinces and Oudh, led to different answers being given to this question, and consequently to important variations in the Revenue and Settlement systems of these Provinces. They, however, all spring out of the Bengal system as the parent stock, following their special evolution in a manner which is eminently curious and instructive.

In Bengal, as I said, there were a few other great men—grantees of the State—who acquired a similar proprietary position and were settled with for their own estates. The "jágír" and "taluqa" grants were, however, few, the "zamíndárs" almost universal. When, therefore, Lord Cornwallis came out in 1786 as Governor General, with instructions to make a settlement which should grant a solid interest in the land to those entitled to it, and which should secure them the fruit of good management, he found nearly the whole country in the hands of the zamíndárs, and the settlement, owing to this characteristic feature, came to be spoken of as the "ZAMÍNDÁRÍ SETTLEMENT" of Bengal.

§ 10.—*Mistaken notions about the Bengal Settlement.*

It will now, I hope, be clear to the student, that the popular and oft-repeated idea of the Bengal Settlement, as carried out by Lord Cornwallis, namely, that it was a proceeding whereby the

[1] See preamble to the Regulation; also section 9, Regulation I of 1793.

"Muhammadan tax-gatherer of the country was suddenly converted into a proprietor," is very far from being accurate or sufficient[2].

It was not *as tax-gatherer* that Lord Cornwallis recognised him, but as the local magnate in the position to which he had gradually advanced, and in which he practically stood, in the end of the eighteenth century. And even if the facts had been less strongly pronounced than they actually were, there were two very weighty considerations which would have led Lord Cornwallis and his advisers to look on the zamíndár as the real proprietor.

The first is one which I have already sufficiently noticed, namely, the difficulty of adopting, or even devising, a different system. Any attempt to put back the zamíndár into his original but long outgrown position, would have ended in utter failure. It would not have harmonised with facts.

The earlier institutions of the Province were in most cases dead beyond resuscitation. There was no machinery for dealing directly with the cultivators, even if the ideas of the time had suggested such a plan as possible to the Collector. The village system had broken up, and the headmen existed only in name. As to the local revenue officers, without whose aid detailed revenue management is under any circumstances impossible, they had become useless. The whole system, originated in the palmy days of the Mughal power, was now in its last decrepitude. There was then no other course but to continue to follow, at least in its general lines, the system which we found in existence. There were the official lists of estates, and the zamíndár of each, responsible for a certain revenue. It would be possible to check his proneness to rack-rent the people and levy extra cesses; steps might be taken to secure the welfare of the "tenants," but it was impracticable to dispense with the zamíndár himself.

[2] It should always be borne in mind, in criticising the acts of our early administrators, that we now approach the subject with the accumulated experience of a century, and with the habits of looking at things and of tracing the history of institutions with which Maine and other authors have made us familiar. No such experiences were available to Lord Cornwallis and to the Court of Directors at home.

The second reason was, that the Court of Directors, no less than Lord Cornwallis himself, entertained the ideas of agricultural prosperity common to English country gentlemen of the time. Nothing, it was considered, could be better for the country than the institution of a landed aristocracy, which would possess wealth to improve the lands and keep together the tenants under a happy bond of paternal influence. The Rájas and other powerful monied men, who were the zamíndárs, seemed just to fill the place of such an aristocracy.

This feeling no doubt largely influenced the method prescribed for making the settlement. Elaborate enquiries, extending over a period of four years, were made before Lord Cornwallis would agree to sanction the Settlement. But these enquiries bore wholly on the question of the revenue assessment and extended to finding out the proper rental of the estates; no effort was made to determine the true extent of land in each estate, or whether the zamíndárs had more land than they were really entitled to; no investigation was made with a view to discovering and protecting, by any system of record or registration, the rights of the cultivators on the estate.

To interfere with the landlord by calling in question the boundaries of his estate, and by making a survey; to make inquest for possibly overridden claims; to set up the rights of tenants in open opposition to their zamíndárs,—all this seemed to be directly derogatory to such an idea of property as was entertained.

§ 11.—*Intended character of the Bengal Settlement.*

In Bengal, therefore (originally), no survey was made; no boundary marks were erected. The Collector had simply lists or registers of the zamíndárs' estates by name, and a description (often very vague) of the boundaries and of the amount of "land tax" each had been accustomed to pay: that was all[3]. He then

[3] See this further described in the chapter on the Bengal system.

settled with the zamíndárs for the amounts, and recognised them as landlords.

As to the original rights of the village land-owners, as far as they survived, there was no intention to do injustice, or to ignore them. But it was conceived that the Government moderation towards the zamíndár would immediately react to the benefit of the tenantry, and would take away all pretext for rack-renting and oppressing them. There were the Regulations directly declaring the zamíndár's incapacity to levy unauthorised dues and exactions, and the Civil Courts were open, to which every subordinate land-holder could resort and claim what he conceived to be his due; but the Revenue Collector was not the person to interfere with the "sacred rights" of property. He had only to receive the fixed revenue and nothing more.

§ 12.—*Principle of a middleman between the cultivator and the State.*

Thus the historical position of the zamíndár, backed by the necessities of the position in which the Government found itself, and supported by the views natural to the time on the subject of landed rights, united to produce the Bengal Settlement of 1793. But they produced a still further result; they tended to fix the principle that the Government could only deal with the land through recognised proprietors intermediate between the "ryot" and the State. This principle, though at the present day it has little practical importance, can be traced through all the original legislative measures on which those systems were founded, and still more clearly in all the discussions which a few years later arose in connection with proposals to deal directly with the individual cultivator and establish, for certain provinces, a different revenue system.

Forty years after the settlement proclamation of 1793, when experience had been gained and those revised Regulations passed, on which our North and Central Indian Settlements are all

either directly or indirectly based, the principle was still recognised. There was not, indeed, in these provinces, any possibility of applying the idea of a great zamíndár proprietor, because no such zamíndárs existed; but the principle led to the recognition of other forms of property in land, varying according to the province, as we shall presently see, and these were equally forms of middlemen's estates with which Government dealt, over the head of the individual landholder.

It is, in fact, the distinctive feature of every form of settlement which traces its origin to the Bengal Regulations, that there must be some one to engage for the revenue *between* the numerous local cultivators or holders of fields and the State; and that person must be recognised as "proprietor," to enable him to maintain his position and secure his power of paying regularly. It was the very different selection of the person who was to occupy this position, which the different circumstances of the several provinces dictated, that led to the variety of settlement systems which we have to study.

§ 13.—*The Bengal Settlement made "Permanent."*

In thus describing the steps which led to the establishment of the "zamíndárí" revenue system, I have avoided complication by keeping out of sight, for the time, the important feature in this settlement, that the assessment was made permanent, and that in consequence of this salient feature, the Bengal Settlement has been specially distinguished as the PERMANENT SETTLEMENT. To this point I now proceed.

The fact that the settlement was made permanent does not in any way affect the considerations which I have stated. In point of fact, though permanency was aimed at, as being the ultimately necessary complement of the advantages to be secured to Government, and conferred on the landholders, by the settlement, it was so far from being essential to the system that it was not at first contemplated. The earlier despatches of the Court of Directors, while pointing to the necessity of making such a settlement as

would not necessitate constant changes, nevertheless directed that the new settlement should be for a term of ten years[4].

I mentioned that the Court of Directors were struck with two great principles which they regarded as necessary to secure alike the revenues of Government and the welfare of the people—proprietary right in the soil was to be conferred, and the Government demand was to be fixed and moderate. The first of these principles led to the selection of the Bengal zamíndár as proprietor; the second led to the settlement with him being declared permanent. The demand of Government was to be so moderate as to leave a fair share of profit to the revenue-payer, and all capricious enhancement was to be declared impossible, so as at once to make landed property secure and encourage thrift and investment of capital. It was also, perhaps, a natural consequence of the idea of creating a landed aristocracy, that the tendency should be to fix the land revenue for ever, as a *permanent land-tax*. The ten years' settlement was evidently only admitted as a compromise, possibly rendered necessary by the state of affairs, but not as a final arrangement.

[4] It must not be supposed, as some works on the Settlement would lead us to conclude, that Lord Cornwallis was the sole author of the system (which is now associated with his name because it was carried out under his supervision) or that he outran his instructions. The Court of Directors had long been dissatisfied, as well they might be, with the previous revenue administration. It had, inevitably perhaps, consisted of a series of experiments and failures, in the course of which many zamíndárs had been ousted. Had the zamíndár been, really, only a tax-gatherer, it was obvious that his retention or ejection could not have raised any question of right. But, in fact, his position was far beyond that, and consequently the terms of the 24 Geo. III, Cap. 25, section 39 (already alluded to) are not to be wondered at. There had been injustice to vested rights in the ejections, and the Court of Directors took the initiative in demanding that the zamíndárs should be restored and their position secured. At the same time the Court strongly insisted on the making of a moderate and fixed assessment, which they considered ought to be the fixed and unalterable revenue of their dominions, but which, for certain special reasons, they consented to introduce for ten years in the first instance. Lord Cornwallis, then, did not originate the idea of a zamíndárí or a permanent settlement, nor was he eager to carry it out; on the contrary, he began by cautiously making enquiries, and he continued the annual assessments for some years before he sanctioned the Decennial Settlement, and made it permanent.—See Cotton's Memorandum on the Revenue History of Chittagong (Calcutta, Bengal Secretariat Press, 1880), pages 49-50.

§ 14.—*Feeling among Bengal officers regarding permanency of the settlement.*

The officers who had made the enquiry as to the possible assessments in 1790, were all of them favourable to the grant of proprietary rights to the zamíndárs; and some of the ablest, for example, Mr. Law of Bihár (uncle of Lord Ellenborough) and Augustus Brook of Shahábád, were favourable also to a permanent settlement. But this feeling was not universal. In the course of the enquiry which preceded the settlement, the Collectors became aware of the existence of rights of other people besides the zamíndárs, which were not defined or provided for; they knew that they were truly ignorant of the real extent of the lands to be assessed, and that they had no means of testing the equality of the assessments. They were prepared to see their conclusions tried for ten years as at first ordered, but they were aghast at the idea of making "permanent" a settlement based on such imperfect data. Sir John Shore (afterwards Lord Teignmouth) was among the ablest opponents of the permanent settlement, and his weighty and well-reasoned Minutes may still be read in the "Fifth Report" to the House of Commons, which has been reprinted more than once. The despatch, however, of the Court of Directors of September 1792[5] settled the matter, and Lord Cornwallis issued his celebrated proclamation which (enacted into law as Regulation I of 1793) declared the settlement *permanent*[6].

§ 15.—*The merits of the Permanent Settlement.*

This feature has been the subject of much controversy; but the more generally received opinion is, that it was a grievous mistake to make the settlement permanent, and that the expected

[5] Despatch of 29th September 1792, to be found, I believe, in Appendix 12A of the Report of the Select Committee of the House of Commons, 1810.

[6] See Campbell's Modern India, page 305 (3rd edition). Here the author represents Lord Cornwallis as anxious to press the permanency of the settlement, and speaks of the Court of Directors as giving a "qualified and reserved" assent; but there is no reason to think that Lord Cornwallis was anxious to press the matter, as explained in a previous note.

benefits have not accrued either to the land, as regards its improvement and the development of agriculture, or to the tenants, as regards securing them moderate rents, and the opportunity for bettering their social condition. It is, however, no part of my object in this work to discuss the arguments which have been advanced on either side, or to advocate or condemn particular measures. Indeed, if this book should fall into the hands of any one whose duty it will afterwards be to introduce a settlement into some province where no system has yet been fully developed, I cannot give a more useful caution than to beg him to beware of becoming the advocate of any system whatever. By all means appreciate the facility of management which the North-West joint-community settlement undoubtedly offers; by all means admire the perfection of the Bombay survey; but do not suppose that any system is essentially perfect, as if it were a divine revelation, and that its introduction *per se* must be a blessing. To a non-Indian reader such a caution may appear strange or unmeaning; but nobody, with even a short experience of India and of official literature, can have failed to perceive the influence which systems have over the officers who administer them. The North-West system especially seems to have had this effect on officers trained under it. The history of the Central Provinces and of Ajmer, and, I may add, of Berar, should read a lesson in this respect.

We have still provinces—Assam, and the districts of Burma—where no artificial system has yet been worked out, where we have simply taken up the old customs, shorn them of their preventible abuses, but worked on their original lines as far as possible. This arrangement may not be, probably cannot be, final. But I can conceive nothing more likely to be fatal to the future well-being of such provinces, than for an administrator to become enamoured of a system as a system, and to insist on its introduction, regardless of the square pegs which will not fit, without undue forcing, into its round holes. Extreme caution, a demand for the most perfect available information and the most extended experience, a readiness to adapt and to modify, and to have no "Procrustean" beds, are the

lessons which I think an intelligent survey of the revenue history of India will enforce, with no uncertain voice, on any candid student.

I am not then to advance any kind of argument *pro* or *con* a permanent settlement, but I may offer two remarks. One is, that the permanent settlement of Bengal has been often attacked as if the policy of the selection of the *zamíndárs* and making them proprietors, and the policy of declaring the assessment *permanent* or fixed for ever without liability to enhancement, were one and the same thing, or at least necessarily and inherently connected. It is not so; either one may have been good or bad without reference to the other.

My other remark is that in considering the advisability of a permanent settlement, it is essential completely to separate the distinct questions (1) whether the fixing of the revenue is, as a *principle*, in itself right, and (2) whether in any given state of things our experience is wide enough, and our knowledge complete enough, to warrant us in introducing it. This caution may not be unnecessary, since the question of a "permanent settlement" for some of the provinces not under the old Bengal system, is not dead but only sleeping, as will appear hereafter.

§ 16.—*Origin of the other Revenue systems.*

I must now hasten to describe the circumstances that led to the adoption of the other Provincial Revenue systems. These all belong to two great classes.

The first class is that which includes the MÁLGUZÁRÍ SETTLEMENT of the Central Provinces, the VILLAGE SETTLEMENTS of the North-Western Provinces and the Panjáb, and the TALUQDÁRÍ SETTLEMENT of Oudh. In all these, the principle of a middleman between the cultivator and the State is maintained, though in the case of the village settlements, the middleman theory is, if I may use the phrase, reduced to a minimum, since the middleman is only an ideal body—the jointly responsible community. But this class is essentially, in its theory and in its history, a derivative of the earliest or Bengal system which we have just been considering.

The second class includes the RAIYATWÁRÍ SETTLEMENTS which have an altogether different history, and which are based on a totally different principle. The settlements of the Madras and Bombay Presidencies and of Berar represent this class.

It will be best to pass over, for the moment, the modifications of the Bengal system and speak first of the raiyatwárí system, since the history of this will show that it had no small influence on the direction which the modifications of the Bengal system took.

SECTION III.—THE RAIYATWÁRÍ SYSTEM.

§ 17.—*The Raiyatwárí Settlements commence in Madras.*

The raiyatwárí system really depends more on the constitutional peculiarities of agricultural society than anything else, and therefore, as regards Bombay, and to a less extent as regards Madras, it may be said not so much to have been introduced as to have existed naturally. In Bombay it was the system of the Maráthá Government which preceded ours; and although this was not the case in Madras, still in many districts the facts of land-tenure were such, that its adoption may be regarded as to some extent a necessary conclusion.

Speaking of it, however, as a British system of revenue management, the raiyatwárí settlement—historically associated with the name of Captain Munro (afterwards Sir Thomas Munro and Governor of Madras)—was finally introduced into that Presidency in 1820.

This, however, is a date considerably later than the permanent settlement of Bengal, and it is the history of the intervening years that is so instructive. It happened that the northern districts of Madras, which were among the first to come under British rule, had long been subject to Muhammadan dominion, and therefore the Mughal system of zamíndárs was firmly established and had produced its usual consequences, in obliterating the tenures by which land had been originally held. But here the zamíndárs did not manage their own lands; they invariably farmed them out. More-

over, all the land was not, as in the Bengal districts, under zamíndárs. Throughout the districts there were also lands called "haveli lands," managed direct by the Government officials. These districts came under British rule about the same time as Bengal, Bihár and Orissa did[7]; and they were at first managed by leases or short settlements of three to five years.

§ 18.—*Attempt to introduce Permanent Settlement.*

But here, as elsewhere under such a system, the management fell into confusion, and as by that time the permanent zamíndárí settlement had been introduced into Bengal, orders were issued to introduce it into Madras also. This was at first resisted, but in 1799 peremptory orders came, and the result was that the zamíndárs were accepted as settlement holders, and as for the haveli lands, they were actually parcelled out into estates called "mootahs" (muṭṭhá) and sold to the highest bidder! Madras Regulation XXV of 1802 (already alluded to) followed, and declared the zamíndárs and mootahdárs proprietors, and granted sanads or title-deeds of "milkíat-i-istimrárí" or perpetual ownership. The same result happened with regard to the "jaghire" (jágír) lands around Madras itself, which had been acquired between 1750 and 1763. In 1794 they were settled by Mr. Lionel Place. This gentleman found village communities surviving, much as they survive to this day in Northern India, and he effected joint settlements[8]. On the issue of the Permanent Settlement orders, however, these settlements were cancelled, and under the Regulation of 1802 the lands were parcelled out into "mootahs" and sold.

Meanwhile, as time went on, other districts—those to the south

[7] See the table at the end of Chapter I which gives the dates of acquisition of the different territories.

[8] All over India, and especially in Central, Western, and Southern India, the difference of the form of village community which was described in the last chapter has had an important influence on the revenue system. The joint-community naturally suggests a settlement with the body (as one) for a lump assessment on the whole village. The other kind of community—each landholder being separate—naturally also suggests a settlement with each individual cultivator.

and west—were acquired (1792-1801). Here, in some cases, lands were held by chieftains called polygars (pálegára) with whom zamíndárí settlements were concluded. But there were many other lands not so held. The tract known as the Baramahál (Salem district) formed a notable instance of this. A Commission was appointed to settle it, one of the members being Captain Munro. The village communities here had, either owing to the grinding rule of Típú Sultán, or to natural circumstances[9], fallen into decay, if indeed they really had such a constitution at any time. The settlement was therefore made with *individual* landholders; but pursuant to the peremptory orders of 1799, these settlements were quashed, and the lands as usual parcelled out into mootahs and sold. This arrangement, however, failed so completely, that the Government was practically obliged to return to the raiyatwárí method.

But the final establishment of the system was, perhaps, due to the settlements of Malabar and Kanara; here, though circumstances prevented the growth of joint-villages, there never was anything resembling the Bengal zamíndárí system, and indeed the levy of land-revenue itself was a novelty. As Munro was engaged on these settlements, he of course adopted the individual or raiyatwárí method, of which he was the zealous and able advocate.

During all this time correspondence went on, and in some places the individual settlements were carried out, in others the joint-village settlements whereby a lump sum was paid by the village jointly, the landholders apportioning the burden according to their own customs[10]. In 1817, however, the Court of Directors came to the determination to adopt the raiyatwárí system. A visit to England made just before this by Captain Munro, probably had much to do with the decision.

Munro had already published able Minutes on the raiyatwárí system, and it had come into general favour; so that when in

[9] For details see the chapter on Madras in Book IV.

[10] In 1808 this was approved of by the Court of Directors, and at one time seemed in a fair to become a settled institution.

the spring of 1820 he became Governor, its triumph was finally secured[1].

The zamíndári settlements that had been made were of course retained, and now about one-fifth of the Madras Presidency is under such settlements, which in all cases are permanent. For the rest, so many of the artificially created mootahs had failed that there was no difficulty in assessing the individual lands, and the joint settlements, where they had been made, in most cases gave way, by an easy process of sub-division, to the assessment of each field.

§ 19.—*Features of the raiyatwárí system.*

The essence of the raiyatwárí system is that the land is surveyed, each field or holding separately demarcated, and an assessment fixed on it; the holder of the field—the raiyat—whoever he is, holds it on the simple terms of paying the assessment to Government direct. He is under no joint liability with his neighbour for any revenue. There may of course be two or more joint-owners of any field or "survey number," but there is no joint responsibility of a *proprietary body* for the entire revenue of a village or other assessment group. Indeed, in Madras, even joint-owners are only held liable, each for his own share.

The term "raiyatwárí" settlement is not exactly satisfactory; for it is not so much that each raiyat is settled with, but that each field or "survey number" is assessed with a fixed revenue. The holder, whoever he may be, is then maintained in possession on the sole condition of paying that revenue.

No enquiry as to subordinate and superior rights is necessary. Every man in actual possession of a field is recorded as "occupant" (unless, of course, he admits that some one else is occupant, and he is either his partner or his contract-tenant or servant). If some one else considers he has a better title than the man in possession,

[1] At the same time, no Regulation was ever passed introducing the system, and there is no general land or revenue law to this day: only individual enactments authorising survey and demarcation, and providing for the recovery of revenue arrears.

he must go to court and get a decree, when the revenue officer will alter the names by a proper entry in his registers—that is all.

Even on the West Coast, where the conquering landholders had in bygone days occupied the lands and cultivated them by means of the aboriginal tribes whom they had reduced to serfdom, the Government took little note of the difference; the registered landholder might be the landlord, or might be a person paying a rent to a superior. The settlement only enquired who in fact was in possession as the payer of the assessment, and registered him accordingly.

The further peculiarities of the system, such as the liberty which it affords to any landholder to give notice and relinquish any field, and also to apply for and take up any one that happens to be vacant, will be described more in detail in the sequel.

In Madras, the occupant is regarded by custom (for there is as yet no law on the subject) as the *owner* of his holding.

The reader will not fail to remark that the practical result of this individual dealing is that those perplexing questions of sub-proprietary right and tenant right which arise under the Bengal system, are to a great extent, if not entirely, avoided.

To put the same thing in another way, since in the raiyatwárí system, the question is always with the person in actual occupation of the land, there is little room for subordinate rights; whereas under the Bengal system, as the person selected to be proprietor (whether zamíndár, taluqdár, or málguzár) is rarely or never in actual occupation, there is always a series of questions as to what is to be said for the people who *are.*

And to sum up briefly; the main characteristic—the diametrical difference—between the two systems is this, that under the one, Government will in no case deal with the cultivator direct; under the other, it will under no circumstances deal with any one else. Then also it happens that under the one system there may be a series of proprietary or quasi-proprietary titles; under the other, this is to a great extent avoided.

§ 20.—*The system as developed in Madras.*

The subsequent history of the Madras raiyatwárí settlements does not show a very favourable state of things. The system, as still worked, has not received illustration in any general law, and it is cumbrous and complicated to the last degree. Moreover, in almost every separate district different customs and practices, shrouded in a technical, and often purposeless, local nomenclature, may be found.

§ 21.—*The Bombay system.*

It is to the Bombay Presidency that we must turn for the best modern development of the raiyatwárí system. Here the survey has been perfected to a remarkable degree, and the practical working has been simplified in a manner which leaves its detail in striking contrast with that of Madras, although its underlying principle is exactly the same.

The Bombay territories came under our revenue administration many years after Bengal and Madras had become British territory. There never was any appearance of the great "zamíndárs," so that the Bengal system could not have been thought of. The bulk of the villages in the Dakhan districts were of the non-united type, while in certain parts there were a few "narwá," "bhágdári" and other estates jointly held by communities connected by a tie of descent. In Guzarát, also, the immigration of martial tribes of the Rájput type have left traces of an 'over-lord' or taluqdárí tenure over the villages, while in the Konkan 'khots' or revenue farmers of the Maráthá rule have acquired rights over the villages of a somewhat peculiar character.

A portion of these territories had originally been settled by Malik 'Ambar, the best representative of the power of the Muhammadan kings of the south in their palmy days[2]. This Minister had been at much pains to secure and acknowledge a proprietary right, and this tended to preserve the ancestral communities, where

[2] He also settled most of Berár.

they existed, since ancestral holding is, in all Eastern countries, the strongest form of connection with the soil. In his time, joint-village assessments were apparently more frequent; and although the Maráthá system had superseded that of Malik 'Ambar, and was essentially a raiyatwárí system, it had not obliterated altogether the traces of the former joint-village assessments. It is therefore not wonderful that the opinion should have been advocated that, in Bombay, the existing status of the non-united villages was in many cases, if not universally, due to the decay of an original joint constitution, rather than inherent in the nature of the groups themselves.

At first, indeed, the matter did not come prominently to notice, because, during the early years of our rule, the territories were provided for by the usual tentative arrangements for farming the revenues on short leases. A short experience, however, during which grievous hardships were inflicted on the districts, sufficed to make us at once, and for ever, discard the attempt, and set about finding a better plan.

§ 22.—*Attempt to introduce a system of settlement with villages jointly.*

The raiyatwárí system was then much in vogue, consequent on Sir Thomas Munro's action in Madras. But Mr. Elphinstone, the then Governor of Bombay, took the view above alluded to, about the joint system, and was anxious not only to maintain it wherever it could be found, but even to create it in the case of those communities where the connection had completely died out, securing, indeed, the rights of each cultivator by record, but establishing a joint responsibility and settling with the original "patels" or headmen of the village as *representatives of the body.*

It is no easy thing, however, to create a joint responsibility where it does not in fact exist. Although long years of custom may have taught the cultivator to submit to an annual adjustment of his individual burdens and liabilities by the headman, it has

never laid him under any responsibility in case one of his neighbours failed[3].

The plan of settling for a lump sum with the village as a body, is advocated because it is said to facilitate revenue management; it enables Government to deal with fewer units. The Bombay

[3] The account of the Bombay system in Campbell's Modern India (1858), though giving a good description of Mr. Elphinstone's views, is now too much out of date to be otherwise useful; for the Bombay system has since been altered and perfected in a way that has completely outgrown a description penned more than twenty years ago. The account is also to some extent marred by the author's apparent prejudice in favour of the joint responsibility and village settlement with which he was familiar. His objections to the Bombay system (notably the costliness of the village officials and the recognition of rights to rent-free holdings) are mere accidents of the place, and do not touch the principles of the system. As a matter of fact, many of these evils have been removed or greatly mitigated. He also speaks of the joint responsibility as if it was an easy thing to introduce. But in fact it is not so. To establish it artificially over whole districts, and tell the people "the system is convenient to your rulers, and when you are wiser you will see that it is also calculated to promote your own interest," is beset with such difficulties as to make it impracticable. The people positively decline to undertake that the solvent members shall be responsible for the defaulting ones. What becomes of your system then? I have elsewhere pointed out the futility of *comparing* revenue systems in point of inherent merit, because every system may be good or the reverse according as it fits the *facts*. But even admitting the superior facilities which the joint system offers to revenue management, the originators of the Bombay system claim for it certain counterbalancing advantages. By breaking up the land into small holdings, and allowing every occupant to keep as many of his "numbers," or give up as many, as he thinks desirable, the small farmer is enabled to contract his operations or enlarge them according to the capital and stock at his disposal. The revenue being fixed for a long term of years, the farmer gets all the benefit of a long lease without its disadvantages. Nor does the Government really lose, because taking its revenue, not from one estate, but from the whole country, that revenue must, under any system, fluctuate with the circumstances of the country at large. With farmers of large capital, the long fixed lease may answer best; but with those of small means, the risk and responsibility which have to be set-off against the security of profits, are more to be considered, and such risks are avoided by giving the villager the right of holding hisl and from year to year only, if he pleases.

In the North-West Provinces every village is allowed an area of waste, which it can bring under cultivation without the total assessment of the village being increased. Under a raiyatwárí system, any uncultivated number that is taken up has to be paid for, but in practice this does not interfere with the extension of cultivation; and as a matter of fact, though the North-West assessment does not increase when the waste of the village is made to yield crops, still that assessment is originally fixed after taking into consideration the capabilities of the estate, and its probable average yield for the whole term.

officers do not, however, admit that there is any difficulty in dealing with thousands of separate cultivators[4].

The difficulty only seems great to those accustomed to deal with one or a few revenue-payers. At any rate, if there is difficulty, it is obviated by a perfect survey, a clear and complete record of each lot or field and the revenue assessed on it, and a thorough control over the village accountants and revenue officers of small local sub-divisions of districts.

It was no doubt this inherent difficulty of creating a joint responsibility, where it did not, naturally or in fact, exist, that led to the abandonment of the attempt, and the universal introduction of the separate field or "raiyatwárí" system. As a matter of fact, a sort of joint responsibility is kept up in certain villages where the shares have survived to this day.

§ 23.—*Progress of the system in Bombay.*

The defects of the raiyatwárí system, as followed in Madras, acted as a warning to the Bombay authorities, and in 1847 three of the ablest Settlement Superintendents met and agreed on a complete scheme for the survey and assessment of the village lands. This

It is also urged that the village officers collect the revenue from each separate holder just as easily as they do from a joint body, who, though together responsible, still ultimately pay separately according to known shares; and as under the Bombay system every occupant is furnished with a receipt book, which the patwári (or pándya or kulkarní) is bound to write up, there is no room for fraud. To any one who wishes further to study the *pros* and *cons* of both systems, and the improvements which the Bombay authorities made on the Madras system to remove objections, I cannot do better than recommend the perusal of the able "Appendix I" to the "Official Correspondence on the Bombay Settlements" (reprint of 1877: Bombay Government Press).

[4] In the Bombay and Madras Presidencies the number of raiyats and average size of holdings as follows:—

Presidency.	Number of raiyats.	Average size of holding.	
Madras	2,569,100	......	8 acres
Bombay (exclusive of Sind) . .	1,382,800	Northern division 8 acres Central do. 32 „ Southern do. 23 „	9 „

resulted in the well-known "Joint Report" which has (1877) been reprinted in the Bombay Secretariat[5]. At first the settlement was carried out under executive orders. It was not till 1865 that a local Act was passed specifically legalising it. This Act has in its turn been repealed; and the whole system has now been completely formulated in the Bombay Land Revenue Code (Bombay Act V of 1879). Under this system there is very little mention of a *settlement* (although the term does occur in the Code). There is really a survey and assessment only. There is no procedure like that of Upper India,—offering a certain sum as the assessment on the whole village, discussing the matter with the village proprietary body, and perhaps making a reduction and coming to terms with the representatives, who then sign an agreement to be responsible. Under the Bombay system, every acre is assessed at rates fixed on almost scientific principles, and then the occupant must pay that assessment or relinquish the land.

§ 24.—*Outlines of the Bombay system.*

The system will be described more in detail in the sequel, but here I may generally indicate the outlines of the procedure.

A certain convenient unit of division is selected to form the "survey number" or "field."

Every field or lot is surveyed, and then the work of classification begins. The soils are classified, and each field is examined, and a sort of diagram made, which shows its soil and the defects which reduce its value. It is thus ascertained for every field, what class it belongs to and what is its *relative* value, or, in other words,—taking the maximum rate for the class as one whole or sixteen annas (on the Indian method of reckoning)—whether the field can be assessed at the maximum or, at something less, at 14 annas, at 12 annas, and so on, down to a minimum. The department charged with this work becomes highly experienced in the

[5] Alluded to in the previous note.

process, so that it can be performed with the greatest accuracy and fairness. Cultivation is usually classed into wet and dry: the process just described treats land only on its dry aspect; if there is irrigation, then an additional rate may be charged, which will be higher or lower according to the goodness and value of the tank or well; the rate is only applied to such land as is really capable of irrigation from the source in question.

Next, the Settlement Officer begins his work as assessor; he has before him the facts of soil classification on its unirrigated aspect, and the details of the means of irrigation where they exist; he has to fix what are to be the full or maximum rates for dry soil, and what are to be the additional rates for irrigation. These rates he calculates with the aid of all the data he can collect, regarding former history, the general situation, climate, proximity to market, &c. The application of the rates to each field, is easily effected by aid of the fractional value assigned it by the classers.

In Bombay (just as in Madras) the occupant of such a survey number holds it on the simple terms of paying the revenue; if he admits that he is (or is proved by a decree of Court to be) holding on behalf of some one else, as a tenant, or in an inferior position, then the "superior holder's" name is entered in the register, not his: he becomes the "inferior holder," and it is the superior who is entered in the register as the "occupant" responsible for the assessed sum. Any one who is recorded as the responsible holder can simply resign (if he does not like to pay the assessment) any field in his holding. The assessment is fixed for a period of thirty years, so that a man who elects to hold continuously, knows for certain that during that long period, *all* the profit he can make will go to him.

At the beginning of each year, he can signify to the mámlatdár (or local revenue officer of a taluq sub-division) what fields he wishes to hold and what he wishes to give up; as long as he does this in proper time, he is free to do as he pleases. If he relinquishes, the fields are available for any one else; if no one applies for them, they are usually auctioned as fallow (for the right of

grazing) for the year, and so on, till some one offers to take them up for cultivation. Nothing whatever is said in the Revenue Code about the person in possession (on his own account) being "*owner*" in the Western sense. He is simply called the "occupant," and the Code says what he can do and what he cannot[6]. The occupant may do anything he pleases to *improve* the land, but may not without permission do anything which diverts the holding from agricultural purposes. He has no right to mines or minerals.

These are the facts of the tenure; you may theorise on them as you please; you may say this amounts to proprietorship, or this is a "*dominium minus plenum*;" or anything else.

The question of tenancy is just as simply dealt with. I have stated that if it appears that the occupant is in possession in behalf of some one else, that some one else is recorded as the "superior holder," and he becomes the "inferior holder." What sort of "inferior"—whether a tenant or on some other terms—is a simple question of fact and of the agreement or the custom by which he holds[7].

If an occupant dies, one (the eldest or responsible) heir must be entered as the succeeding occupant who has to pay the revenue, for there can only be *one* registered revenue-payer for each field with a separate survey number; though of course there may be several sharers (joint heirs of the deceased owner, for instance) in a number. Which of them is so entered, depends of course on consent, or on the result of a Court decree, if there is a dispute.

[6] The "right of occupancy"—*the right to be* an occupant is itself declared to be a *transferable* and *heritable property* (Code, section 73); but that is quite a different thing from saying that the occupant is the proprietor of the soil. In the official language of the Presidency, the occupant is said to hold on "the survey tenure."

[7] There is also no artificial tenant right. In Bombay, as in all other provinces, there are jágír and other "inám" holdings which are revenue-free, or only lightly assessed, and occasionally other tenures in which there may be a superior holder drawing a revenue from the estate: there the actual occupants are sub-occupants, not tenants, as they do not hold in consequence of any contract with the superior.

Sharers can always get their shares partitioned and assessed separately, as long as there is no dispute as to what the shares are.

SECTION IV.—THE SYSTEM OF UPPER INDIA.

§ 25.—*Systems derived from that of Bengal.*

Such are in outline the two great rival systems of Bengal and Bombay—the system of settlement with middlemen-proprietors, and the system of settlement with individual occupants, or rather the assessment of separate fields, and the recognition of each occupant in possession, so long as he pays the assessment.

I must now return to describe briefly, and in outline, how the first of these systems (that which originated under the Bengal Regulations) branched off into several other systems, and developed successively into that of the North-Western Provinces (afterwards applied to the Panjáb), that of Oudh and that of the Central Provinces.

The permanent settlement law of 1793, which applied to Bengal Proper (Bengal, Bihár and Orissa[8]), was extended by Regulation I of 1795 to the province of Benares, so that the districts of that province (now in the North-Western Provinces and comprising the modern districts of Benares, Gházipur, Mirzapur (except the southern portion), two parganas of Ázimgarh and Jaunpur), were permanently settled like Bengal. These districts are now under the modern North-West Provinces Revenue Law, which has improved their surveys, perfected their records of rights, and improved the processes of revenue and rent collections; but this does not touch the permanency of the assessment made in 1795.

§ 26.—*System required for Ceded and Conquered Provinces.—Regulation VII of 1822.*

The necessity for some modification in the Bengal system came to notice as soon as the districts beyond Bengal were added to the British dominions.

[8] The old Orissa (1765) consisted of the present Mednipúr district and part of Húglí.

The first among these were the "ceded provinces[9]," Allahabad, Gorakpur, part of Ázimgarh, &c. (1801), and the districts "conquered" during the Maráthá war (1803), Etáwa, Aligarh, and others, with part of Bandelkhand, and in Bengal, the districts of modern Orissa,—Katák, Bálásúr and Púrí.

In these there were no zamíndárs, and in many of them the original system of landholding by village communities, of the joint type, had survived. Orders were at first issued to settle these North-West districts permanently: but the Commissioners appointed to the work objected, and even resigned their appointments. Then the Home Government interfered and prohibited permanent settlements: after this, the usual plan of tentative revenue management, by farming the separate village estates, followed.

The Orissa districts had been settled, and the settlement was legalised by Regulation in 1805. In 1817 the working of the Orissa settlements was specially enquired into, and as about that time the first short settlements of the ceded and conquered districts in the North-West were falling in, the whole subject of revenue settlements was carefully re-considered, and the Regulation VII of 1822 was passed, which became the basis of the modern Upper Indian Settlement Law. The history of the settlement of the Orissa districts under the law, does not present any special features calling for notice in this preliminary sketch. Some remarks in it will be made in the chapter devoted to Bengal. Here it is more important to consider Regulation VII as the basis of the settlements of the provinces of Upper India generally.

The first of these provinces to be settled under this law was the North-Western Provinces.

§ 27.—*Features of the Regulation VII system.*

Regulation VII of 1822 was, in fact (in 1825 by Regulation IX), extended to all parts of the Presidency which had not been

[9] See Chapter I, page 17.

permanently settled; and the opportunity may be conveniently taken to state its leading features. The Regulation still went on the original principle that there was to be the recognition of a proprietary right in the land, and a settlement with the proprietor; and the assessment was to be moderate, but it was to be fixed for a term of years only, not for ever.

But it was no longer to be left to tradition, or to old Native records, to establish what were the limits of each 'proprietor's' estate: nor were rights which might exist, besides those of the persons acknowledged as proprietors, left to the chance of their being vindicated in a distant Civil Court. The three main features of the new Regulation (which have survived all changes, and have never been allowed to disappear even from the most recent Revenue Acts) are—

(1) That every estate is carefully demarcated and the fields and holdings in it (after determination of all boundary disputes) registered.

(2) That all rights are enquired into at the settlement and authoritatively recorded; not only the rights of the person considered to be proprietor, but the rights of all who are now interested in the soil or its produce, subordinate proprietors, tenants, and so forth. If there were several persons together forming a proprietary body, the principle on which the shares, or according to which the burdens and profits of the whole were distributed, had to be ascertained and described.

A record was to be drawn up (called the wájib-ul-'arz) showing all village customs affecting the way in which the persons interested in the land shared in the profits, in the village expenses and in the revenue burden; what customs affected transfers and successions in case one person on the estate sold his land, or dying, left it to his heirs; and all other matter affecting the constitution of the proprietary body.

(3) The assessment of the revenue was to be no longer a matter of tradition—a blind following of what was recorded in the revenue-rolls of the older Native Government. An enquiry was to be made

into the real yield of the lands, and a fixed share of that, valued in money, was to be taken as the Government revenue.

It is true that Regulation VII of 1822 could not be worked as it was originally framed ; the Collector was expected himself to conduct the enquiries of the settlement, and this was impossible: it became necessary to provide some further machinery. Also, the method of assessment by ascertaining the produce of each field, proved impracticable. Regulations of 1825 and 1833 were therefore passed to remove these difficulties[10], but the main principles were not altered.

§ 28.—*Character of this system in the North-Western Provinces.*

It has been observed that this Regulation intended to combine the advantages of the raiyatwárí system, at that time well known through the Minutes of Sir T. Munro, with the principles of the Bengal system. This may be to some extent true, for, probably, the provision for registering all land, and interests in it, was suggested by Munro's Minutes. But the principle of a middleman was not abandoned. It happened (as already explained) that in the districts of the North-Western Provinces the villages were of the joint type;—held by a body of cultivators many of whom remembered an ancestral connection[1]. In all such cases, the community, as a body, was declared "proprietor," and was represented by its one or more headmen or "lambardárs," who signed the engagement to pay the revenue, on behalf of the whole body, and who received a fixed percentage on the revenue, as a remuneration for their trouble and responsibility. The shareholder in the joint body is not recognised as proprietor as an individual, but only as a member of the community which is jointly responsible as a whole; so that, legally speaking, the "joint body" (as a juristical person) is proprietor between him and the State.

[10] As will be noticed more in detail in the chapter on the North-West Settlement.

[1] Many of the villages were originally joint, and the rest, if not so originally, accepted the position because of the rights in common land which it brought with it.

Of course, it occasionally happened that the community was represented by a single owner, or that there was a taluqdár, some State grantee, or other person whose position as superior proprietor could not be ignored; then if he was settled with as proprietor, the subordinate rights were secured by record. The taluqdárí or double tenure was not common in the North-Western Provinces, nor in the Panjáb, and wherever possible the Settlement Officers settled direct with the villages, and bought off, as it were, the claims of the superior, by securing to him (for life or in perpetuity according to his right) a cash payment from the village revenue.

§ 29.—*Method of assessment.*

The method of sasessing the revenue has of late years been entirely revised, and reduced to a system ; but this will be best studied when we come to the study of the North-West Settlements in the chapter specifically devoted to them. The assessment in general is now based on a calculated true rental, or letting value of the land, a percentage of which represents the Government revenue. For the purpose of calculating this rental, soils are classified and rates established for irrigated and unirrigated lands in the classes. The great extension of canal irrigation, which the last half century has seen, has had of course a great effect on the land revenue[2]. In the provinces where cash rents are still uncommon, a different method of assessment has to be resorted to, and produce estimates are still much relied on.

§ 30.—*System of village accounts.*

To keep up the records prepared at settlement, and also to record changes which occur subsequently by death, sale, or

[2] Mr. H. S. Cunningham (India and its Rulers : Allen, 1881) gives the following percentages of irrigated land to total cultivated in the different provinces :—

Bombay, 1·8 per cent. Central Provinces, 5 per cent.
Sind, 80 per cent. Panjáb, 26·2 per cent.
Madras, 23 per cent. N.-W. Provinces and Oudh, 32 per cent.
Berár, 1·5 per cent.

The total cultivated area in British India is 192,250,000 acres, of which 28,420,000 are irrigated more or less.

gift; also to prevent disputes by keeping accounts of the rents chargeable against tenants, and entering up all payments made in every village, it was necessary to re-organise and improve the native system of village officials, and to supervise them in the discharge of their duty by means of Native officials of conveniently small revenue sub-divisions (parganas and tahsíls). Hence the introduction of the Regulation VII Settlements was everywhere followed by the opening of local revenue offices, and the complete organisation of the subordinate staff of revenue officers.

First comes the village patwári, who is bound to record and to report all changes in the landed interests of the village, as well as to keep accounts between landlord and tenant, and of all payments on account of revenue cesses or village expenditure[3]. Then comes the qánúngo, who supervises the patwári and sees that he keeps up the records relating to the state of the village, and duly makes his report to the "tahsíl" office. Above him comes the "tahsíldár," the local Native revenue officer, who is the Collector's assistant (and representative to some extent) in the portion of the district comprised in his tahsíl.

§ 31.—*The same system extended to the Panjáb.*

Such is in very brief outline the "North-West system" of settlement and revenue management.

This system was adopted in the Panjáb with so little change that no further notice of the Panjáb settlement in this preliminary sketch is needed. The village communities were found even more generally, and in more vigorous existence, than in the North-West, so that the system was adopted as it stood. The few changes made, were in the interest of the communities, to prevent their breaking up, and concerned some other points which are purely matter of detail.

§ 32.—*Proposals for making the North-Western Settlement permanent.*

Before I pass on to describe how this system was applied to the other provinces, I must, by way of episode, make some remarks on

[3] Which, of course, the most part of the peasantry are too illiterate to keek themselves.

the proposals which were revived in 1861, for making the assessments of the North-Western Provinces "permanent[4]."

When the thirty years' settlements made under the Regulations of 1822 and 1833 began to fall in, the country was still suffering from the effects of the disorder produced by the Mutiny, and by the famine and cholera of 1860. Under such gloomy circumstances, the districts came up to be resettled for a new term. The report on the famine of 1860-61 by Colonel Baird Smith, struck the key-note of praising the moderate assessments of the past settlements, and treating them as an instalment of a gift which would be completed by making the moderate assessment *permanent*. This received, at the time, a good deal of commendation. The pendulum of general and official opinion, swings in a long course from side to side in these revenue administration questions,—permanency, tenant right, and so forth; and at that period it was again on the descent towards the permanent settlement side. Then came Lord Canning's Minute of 1861, regarding the sale of waste lands in freehold (free of revenue demand), and regarding the redemption of the land revenue, by paying up in one sum the prospective value of the revenue demand. On this, the Board of Revenue advocated a permanent settlement (for, of course, the revenue must be permanently assessed before it could be redeemed). The Secretary of State, however, in 1862, declined to allow a redemption of land revenue, but said he would listen to proposals for a permanent settlement. It was assumed that when a careful revision had been effected, and when no considerable increase of cultivation in future was probable, a permanent assessment might be practicable.

In 1864 the terms were formulated by the Government of India (and were modified at home in 1865). The condition was laid down that 80 per cent. of the culturable area should have been brought under cultivation, and then that the rate of permanent assessment need not be as low as 50 per cent. of the net assets (the

[4] I am indebted throughout to Mr. A. Colvin's admirable Memorandum on the Revision of Land Revenue in the North-Western Provinces, 1872 (Calcutta: Wyman Co.)

rate at which the revenue demand had previously been fixed by the ordinary settlement rules). In 1867 another condition was added, regarding the probability of canal irrigation being extended to the lands in the next thirty years.

Then, it seems, officers were set to work to find out what districts or parts of districts could be permanently settled under these conditions. But in 1869 some cases came up (in the course of the enquiry) in which, supposing the settlement to be made permanent,—notwithstanding that the conditions were satisfied—there would be a great prospective loss to Government. Accordingly, a third condition was recommended. The Government of India, in concurring, went so far as to say, what practically amounted (as Mr. Colvin justly puts it) to this, that a permanent settlement should be deferred so long as the land continued to improve in value by any causes which were not the direct result of the occupant's own efforts. So that at present the question is in abeyance, and no further attempt has been made to press it.

§ 33.—*The history of the North-Western Provinces revenue system resumed;—its application to Oudh.*

I may now resume the narrative of the different developments which the Regulation VII system has received in different provinces.

The Panjáb, I have said, was, when annexed in 1849, found so much to resemble the North-Western Provinces in the matter of the village communities, that the North-Western Provinces Settlement system was there adopted almost without change. Then came Oudh. When this province was annexed in 1856, the idea was to manage it on principles similar to those laid down for the Panjáb, and therefore this province also came to be settled on the North-West system, under the guidance of circular orders and directions taken from the North-West Provinces standards. But the history of landed property in Oudh had developed in a way which would not suit this attempt to copy the North-West system

exactly, and make settlements with the village communities. A large portion of the Oudh villages had, in the course of time, come to be more or less contentedly established under the management of "taluqdárs," who were the outcome of the revenue system of the Oudh kingdom, just as the zamíndárs were of the Bengal system.

It has been asserted that these taluqdárs were really officials, or grantees, of the Muhammadan power, their duty being to manage the villages and collect the rents or revenues, paying part into the Government treasury, and keeping part to remunerate them for the trouble and responsibility.

But this statement is only true to a limited extent. The origin of the institution is to be looked for in the Rájas of the old Hindu kingdoms, whose connection with the land, and whose history and decline I have already described. The Muhammadan power was content at first simply to take a revenue from each village, leaving the Rája otherwise very much in his original position. But later on the Government grew worse and worse, and the only chance of getting in the revenue was, by demanding a certain sum from each taluqa or group of villages. Naturally then the old Ráj, or more probably, the later divisions of the original Ráj, formed the estate that was now called a taluqa, and the old reigning family would furnish the person who should answer for the revenue and so keep a hold over the estate.

Here and there, no doubt, a powerful local landowner would erect himself into a similar position, neighbouring villages voluntarily putting themselves under his protection. For in those days of oppression it was actually a source of strength for the villages to belong to a taluqa, or put themselves under one. Occasionally, too, a mere revenue farmer or speculator would acquire, through the influence of his money, and the power he had of protecting weak villages, the same position.

The Oudh Government found it convenient to make terms with these powerful local magnates, and take a certain revenue from them, giving them the vague title of "taluqdár," which is

really incapable of definition, but literally means some one who is in "connection" with the land[5].

Some help to understanding the use of this title may be derived from the history of Bengal. In Bengal proper, a very few such titles were created by royal grant, in just the same indefinite position; they were not like the easily-defined zamíndár, for in Bengal in some cases they were created *inside* zamíndárís, and, according to their rank, were made either dependent on, or independent of, the zamíndár.

In Oudh it may be reasonably concluded that the title "taluqdár" was intended to recognise, in general terms, the superior protective position over the villages, in which the old Rájput Chiefs or other great men practically were, without defining the *status*, which, indeed, would be very difficult to define, because it varied partly with the natural ideas of the taluqdár, and partly with his power and necessities.

In some cases, he contented himself with the right of gathering in the revenue and paying it in to Government, after deducting his share; in others, he crushed out the rights of the original landholders altogether. Then, again, the local extent of the charge was very indefinite. Wherever these taluqdárs had not been created or had not originally existed, the villages were managed by revenue officials of districts and circles called "Názims" and "Chaklédárs." When the Oudh Native Government grew more and more corrupt and feeble, as we know it did (to the extent which at last made it necessary to overthrow it altogether), the State control was practically withdrawn from these local officials, who then pillaged and oppressed the villages without stint. Then it was that the "taluqdárs" stood the people in good stead: the villages placed themselves under the protection of the chief who would by force of arms rescue them from the clutches of the *quondam* officials. On the other hand, the taluqdárs would often

[5] In the Panjáb the term "taluqa" was commonly used in the Cis-Sutlej States to signify the territory which a Sikh Chief conquered and kept for himself and comrades in arms.—See Melvill, Settlement Report, North Ambála, page 49.

annex villages of their own accord, or take them one from another in those local fights which were the standing institution and source of excitement in those troubled days[6].

§ 34.—*First Settlement of Oudh.*

When the province was annexed, the British Settlement Officials, filled with admiration for the North-West system, which made the village-community settlement to be so easily worked, attempted to set aside the taluqdárs and settle direct with the communities. Scarcely had this been done when the Mutiny broke out and threw everything into disorder. The result is remarkable; the villagers voluntarily returned to the old taluqdárs and paid them[7], affording a valuable lesson of caution in attempting to let a revenue theory override facts. The taluqdárs had, however, joined the insurgents, and by proclamation all their rights were forfeited, with an exception in favour of five loyal chiefs: thus there was a *tabula rasa* for future operations.

When the settlement operations were resumed, other counsels prevailed; the taluqdárs were pardoned by proclamation in 1858, and reinstated, and the settlement was made with them. The "sanads" given them declared them proprietors of their taluqs[8]. Then, as is inevitable under all derivative forms of the Bengal settlement, the rights subordinate to the upper proprietary title had to be protected; and a variety of somewhat complicated, but very necessary, rules were enacted for securing the just rights of the village "sub-proprietors" under the taluqdárs. These will be further described in the chapter on Oudh Tenures.

So here we see the historical condition of a province causing the same system which in the North-Western Provinces and Panjáb had led to settlements with a *community*, developing into a settle-

[6] Administration Report, Oudh, 1872-73, General Summary, page 26, &c.

[7] See Introduction to the Oudh Gazetteer, and the Administration Report of Oudh, 1872-73, General Summary.

[8] The student will observe that here again there is a *proprietor* between the village body and the State.

ment with a chief over the heads of the community, and according to the latter a secured but secondary position as subordinate proprietors. Thus the Oudh Settlement is spoken of as the "TALUQDÁRÍ SETTLEMENT."

§ 35.—*The Settlement of the Central Provinces.—Initial difficulties*

The remaining province, which we have to touch upon as exhibiting yet another development of the Regulation VII system, is that called the Central Provinces.

These provinces[9] were only brought together in 1861, some further changes and additions being made subsequently.

Setting aside a number of hill chiefships to which no revenue system has been applied, there are the districts of the old "Ságar and Narbada" Province, those of the Nágpur Province, Nimár, and the districts to the east (more resembling Chutiya Nágpur and the Tributary Mahåls of Orissa).

The first named of these groups had been early placed under the North-West system. Indeed, the northernmost of these territories, adjoining Bandelkhand, seem to have presented very generally the North-West feature of joint-communities, where the dominant family is really the proprietor, without much artificial creation of such a character. But the western and all the Maráthá districts commonly consisted of what I have called the "non-united villages," *i.e.*, where the cultivators have no ancestral bond of union or common interest in the estate, although they are locally united under the management of quasi-hereditary village officials.

It is interesting to notice how differently matters developed in these provinces from what they did in Bombay, where a somewhat similar state of things existed.

In the Bombay Presidency, we have seen that the ultimate result was to assess each field or holding on the raiyatwárí system, and not attempt to create a joint responsibility in the community,

[9] *Vide* Chapter I, page 20, where a table is given.

still less to find some middleman *over* the community who should be made proprietor.

In the Central Provinces, as may be supposed, the raiyatwári system was not without its advocates. But the Ságar and Narbada Settlement Rules of 1853 were already in use, and under these (after various tentative systems of farming, which usually precede a more methodical arrangement) some districts had been settled. The result was, that when the Nágpur Province districts came to be settled (and afterwards the Nimár district), there was naturally a tendency in the minds of authorities, already strongly in favour of the North-West system, to extend it, and to apply the Ságar and Narbada rules which were ready to hand.

And these instructions (supplemented by further orders) were accordingly reprinted and issued by authority in 1863, as the Settlement Code for the Central Provinces generally. This Code has guided the formation of the existing settlements, and it has only recently been superseded by a general revenue law, Act XVIII of 1881.

The adoption of the North-West system led to some curious results; for the difficulty was the same as that felt in Bombay. Wherever the villages were originally joint (as in the districts bordering on Bandelkhand) the difficulty did not, indeed, arise. But in the other districts, where the villages were not of that kind, what was to be done? To create (or revive authoritatively, whichever it be) a joint responsibility, and so form villages on the North-West model, proved as impracticable as Mr. Elphinstone found it in Bombay[10]. At the same time it was not possible, consistently with the system, to settle directly with each holder of

[10] Some hope was evidently entertained of overcoming this difficulty and getting a settlement on the pure North-West Provinces model. The instructions for the settlement of Nimár in 1847 directly propose the creation of the joint responsibility; but the proposal could not be carried out. In the orders relating to the Ságar and Narbada territories of 1853, the joint responsibility is also alluded to side by side with directions for recognising a proprietary right in the málguzárs. But by the time orders were issued for settling the Nágpur province in 1860, the matter seems to have been regarded as hopeless, and nothing is said of joint responsibility.

land[1]. Nor was it possible to declare all the land to be Government property, and the landholders to be tenants or lessees of the State. Such a plan had practically been tried in some districts and failed.

§ 36.—*The solution proposed by Government.*

The Government orders passed on the reports which describe the failure of these attempts[2], all pointed to one remedy. A secure proprietary title must be created, and a settlement made with the recognised proprietor. If there was a community of village owners who could be made jointly responsible, well and good; if not, the leading men with the strongest claims to a hereditary position must be selected, and the proprietary right *conferred* on them, taking care to secure by record, the subordinate rights of others who might be perhaps nearly in as good a position as the persons selected, and therefore entitled to every consideration.

§ 37.—*History of the Central Provinces proprietors.*

Now I have already indicated that the groups of land which formed the villages were held together by one bond, and that is, that they acknowledged the management of a hereditary patel or headman. The Maráthás were prudent financiers, and wherever their rule was firmly established, they always acted on the principle of not interfering with existing institutions; they found that they got much more revenue by dealing with small areas,—in fact with each landholder—through the patel. Consequently, they either assessed each holding, or fixed a total sum for the village, and let the patel distribute this on each holding by a yearly "lágán" or revenue distribution-roll. The patel did not, however, pretend to be owner of the village; all he owned was his office and the perquisites and dignities which attached to it; and, in some cases, the "watan" or lands acquired in virtue of office.

[1] A raiyatwárí settlement was advocated in some quarters (as stated above), but it was not to be expected that the authorities of the North-West Provinces would approve.

[2] Which may be read in Nicholls' Law of the Central Provinces.

But there were districts in which the Maráthá power was not firmly established, and there a more lax method of revenue-collecting was adopted; the same thing also happened when the power of these conquerors was in decline: contractors or revenue farmers were appointed, often to the ousting of the hereditary patel, who perhaps proved unequal to the task of punctual realisation, or perhaps refused point blank, on account of the oppressiveness of the amount demanded of him. From causes which cannot here be detailed, this institution of revenue farmers had been introduced into most of the districts; and when our Settlement Officers came to carry out the orders they had received, in most instances they found the revenue farmer—the "málguzár"—in a position of prominence, which made him appear to be proprietor of the whole village.

Accordingly, the málguzárs, or in some cases the hereditary patels (when they had themselves been allowed to engage, or had succeeded in otherwise maintaining their standing), were declared proprietors of the entire village, over the heads of the individual landholders; and the settlement was made with them. The requirements of system were thus complied with; but, as usual, this creation of a middleman proprietor caused difference of opinion and difficulty as to the subordinate rights which had to be provided for. The detail of this must, however, be reserved for a subsequent chapter.

This creation of a new kind of right under the influence of a particular system, now that we look back on it as a thing done and past, may excite some surprise. But in point of fact, the málguzár had developed and grown into his new position just on the same principles as the Bengal "zamíndár" had; only while in Bengal the "zamíndár" was over a large tract of country, in the Maráthá provinces the revenue contract was given out for one, or perhaps a few villages. In either case, however, the revenue-farmer gradually grew into that position which our officials (obliged by the system to find some one to settle with other than the individual land occupant) easily translated into proprietor. He had originally certain lands of his own; if he were "patel," he may have held some

land in virtue of his office by a peculiarly strong custom: then he would have other fields which he had possessed himself of by sale or mortgage, or even by violence: his power of managing the waste lands in the village, enabled him to locate his own people as cultivators, and thus, in the course of years, he acquired an apparently proprietary character[2].

§ 38.—*Character of the settlement.*

Here then we have the last development of the Regulation VII system into the settlement which—as in the conspicuous majority of cases it constituted the official málguzár proprietor, and engaged with him—is commonly spoken of as the MÁLGUZÁRÍ SETTLEMENT of the Central Provinces. It must be understood that this name is given by the rule of the majority; there are districts in which the settlement is often with a jointly responsible community, on the pure North-West Provinces model; but this is chiefly in districts near Bundelkhand; further off, the patel or málguzár proprietor is the most common.

§ 39.—*Systems of other provinces.*

The other provinces with which this Manual is concerned are represented by Ajmer, British Burma, Assam, Coorg. Ajmer is interesting as showing a complete survival of that form of land organisation which followed when conquering bands of military Ayan tribes (Rájputs) established a government, but were not settled as *a people*. In this district village communities were

[2] I shall not be understood as implying that in all, or even in a majority of cases, the process was carried to this complete issue; otherwise, no objection could be taken to the principle of the settlement. There can be no doubt that in the Central Provinces, patels were often made *proprietors* who really owned nothing but their hereditary office and its perquisites; and many málguzárs who had not been half a dozen times inside the village in their lives, suddenly found themselves called the owners of the whole. I only desire to point out the undoubted general tendency of things to develop in a certain direction; the least intelligent reader will recognise that, whether in the case of a Bengal zamíndár, an Oudh taluqdár, or a Central Provinces málguzár, the process did not always become complete or arrive in any given number of cases at the same stage of development.

quite unknown. The district was afterwards settled on the North-West system, and an account of it is therefore included in Book III relating to that system.

The remaining provinces are under, what I may be allowed to call, the "natural system," *i.e.*, we have not created or recognised "proprietary right" in one class or the other; we simply realise, according to old Native custom, a certain rate per acre, a tax on households, or a fee upon each man who clears a patch of land for cultivation, while in villages which have regular and permanent cultivation, a survey has been introduced and a regular settlement, on which, however, each cultivator is severally responsible for the revenue of his own holding. These provinces are represented by Assam and British Burma.

A few also of the more backward districts in the provinces which, as a whole, come under one or other of the general systems here sketched, are excluded from the ordinary laws under the title of Scheduled Districts—a term which has been explained in a previous chapter. These tracts often exhibit local peculiarities, and sometimes have local Regulations prescribing their revenue management. When necessary, I shall refer more particularly to these in separate appendices to the chapters on the general system of the province to which they belong.

§ 40.—*Conspectus of the systems.*

I conclude this introductory and general sketch, first with a diagram which will recall the chief features of the development of our revenue systems, and next with two tables which will give some idea of the general effect and results of land-revenue settlements. The first table gives the nature of the settlement and the date of its expiry, the asses sment which resulted from it, and the cost incurred in making it. The permanent settlement of Bengal is not included in this, as details of this can more conveniently be given in the chapter specially devoted to Bengal. The second table shows the general average rate at which land is assessed.

The Bengal system of 1790-93 (seeks to declare some person to be landlord or proprietor and secure his position between the cultivator and the State).

Permanent settlement with zamíndárs as proprietors, 1793.

At first applied to Madras, but afterwards prohibited; still survives as regards some of the districts. Attempts in some districts to make joint-village settlements.

Madras raiyatwárí system (1820); occupants regarded as proprietors, elaborate system of annual remissions, &c. Great local variations in system and nomenclature.

Bombay raiyatwárí system of field assessment; no theory of ownership; occupant has right to transfer and to hold on condition of punctual payment. Settlement for 30 years only: system uniform and defined by a Revenue Code.

Improved system of Bengal Regulation VII of 1822 and Regulation IX of 1833, non-permanent settlement (usually for 30 years).

Settlement with *proprietary joint communities*, through a representative; **North-Western Provinces and Panjab.**

Settlement with *taluqdárs* over the communities; **Oudh.**

Settlement with *málguzárs* over the individual occupants of villages; **Central Provinces.**

I.—General statement showing the results of settlement (from data in Mr. Slack's Memorandum of 1880).

Provinces.	State of existing settlements.	Permanent settlement will expire between	Actual current assessment.	Total cost of settlement operations (exclusive of revenue survey).	Cost as percentage on one year's revenue.	Percentage of return on settlement outlay.	Remarks.
			Rs.	Rs.			
North-Western Provinces.	1st revision of old settlements now nearly complete.	1882—1910	3,79,67,719	1,36,75,194	36 per cent. .	34·5	Modern settlements are more costly because much more accurate and complete both as regards assessments and the data for them, the surveys, the records of rights, and all other details. Poor districts always cost more than rich ones, for a settlement which produces 9 lakhs of revenue in a poor district, may, though consisting of the same operations done by a similar staff, produce 16 in a rich district.
Oudh . . .	1st regular settlement (just complete).	1893—1906	1,44,21,814	62,54,508	43·4 „ „ .	62·3	
Panjáb . .	Last made 1st regular settlements (some of the earlier ones are already coming under revision).	1894—1908	1,79,40,918	76,76,128	Old settlements still current . 28·6 Settlements 1862—1875 . 36·6 1872—1880 . 60·0	Made at a loss. 25·3 17·4	
Central Provinces	1st regular settlement, 1858—1869.	1880—1897	59,75,907	36,65,917	61·4	19·7	
Bombay, excluding Sind.	Last of the original settlements will expire 1900. Many revision settlements already done.	...	1,99,54,760	1,22,41,992	Early 1st settlements . 61·6 Recent do. . 71·4 Revised do. . 41·9	25·0 14·0 65·0	
Madras (survey settlement in 8 districts).	Between 1855 and 1879.	1892—1909	1,57,14,700	82,11,415	52·1 per cent.	10·0	
Berar . . .	Settlement made 1831—1876.	1892—1906	66,20,753	21,90,946	33·1 „ „	69·0	

II.—Statement showing general average rates of land revenue.*

Province.	Per acre of revenue-paying culturable area.			Per acre of revenue-paying land, cultivated.			Per head adult male population.[1]			Per head total population.		
	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.
Bengal and Assam	......			......			3	5	6	0	3	[illegible]
North-Western Provinces	1	7	6	1	14	6	8	1	7	1	9	[illegible]
Ajmer	......			......			......			1	4	2
Oudh	1	4	7	1	12	3	......			1	4	[illegible]
Panjáb	0	10	11	1	2	9	......			1	3	2
Central Provinces	0	3	8	0	7	2	9	7	10	[illegible]	2	6
Berar	......			......			11	5	2	2	4	5
Coorg	1	10	3	2	12	10	[illegible]	2	[illegible]	[illegible]	[illegible]	[illegible]
British Burma	1	1	8	2	2	1	11	13	0	1	[illegible]	2
Bombay	0	14	3	1	2	1	17	11	5	1	14	[illegible]
Madras	1	8	6	1	13	2	{ 6 { 5	13 12	9, 6;	1	3	[illegible]

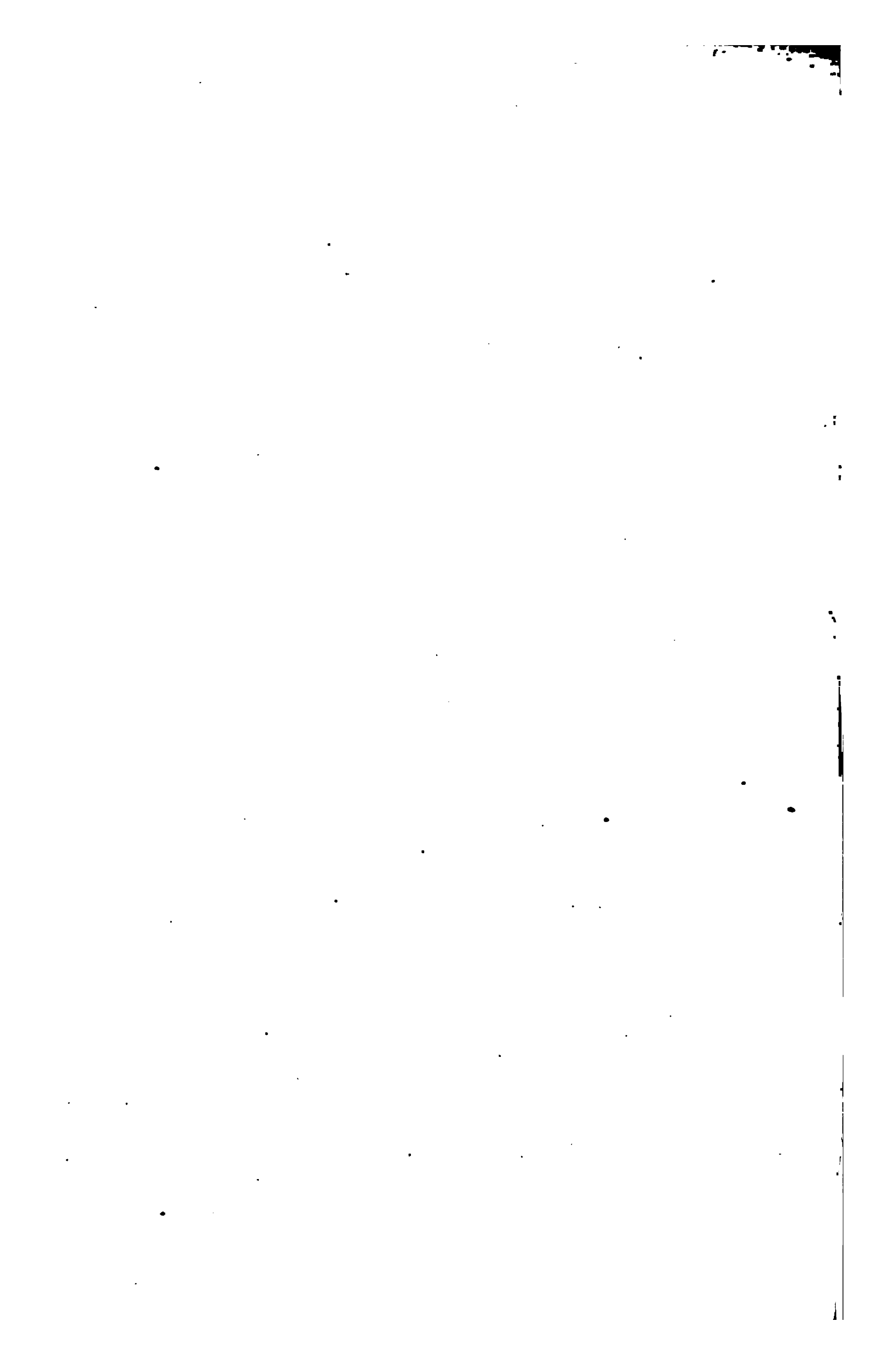
* This is taken from the Standing Information for Madras edition of 18[illegible].

[1] Above 12 and above 20 years of age respectively.

Mr. Stack (in his Memorandum on Temporary Settlements, 1880, p. 35) gives also the following table of the incidence of land-revenue on cultivated land per acre :—

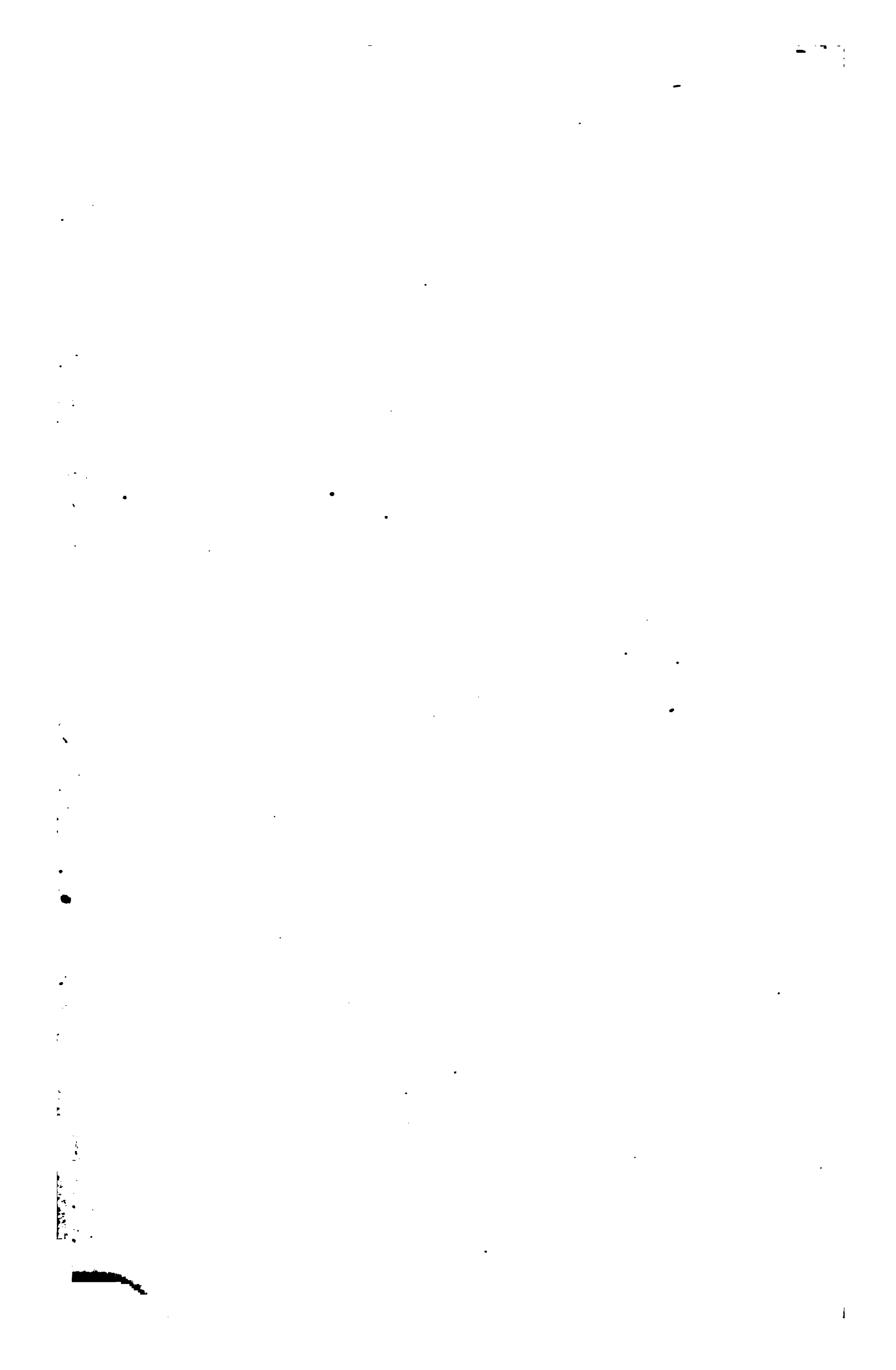
	Heaviest assessed districts.									Lightest assessed districts.								
	I.			II.			III.			I.			II.			III.		
	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.
N.-W. Provinces	2	8	0	2	7	4	2	6	9	1	3	9	1	1	[illegible]	[illegible]	[illegible]	3
Oudh	2	5	9	2	5	6	2	5	5	1	7	0	1	3	4	[illegible]	1	7
Panjáb	1	15	6	1	13	6	1	11	9	0	7	8	0	5	[illegible]	[illegible]	3	3
Central Provinces	0	11	6	0	11	2	0	9	10	0	4	0	0	3	[illegible]	[illegible]	3	[illegible]
Madras	3	12	11	3	9	3	2	11	9	1	2	5	0	13	[illegible]	[illegible]	[illegible]	4
Bombay	4	3	3	3	6	4	3	6	0	0	5	1	0	7	5	[illegible]	7	1

Mr. Stack also gives the average incidence of land-revenue per acre (somewhat different from the above). Thus he gives the rate for North-Western Provinces as R. 1-11-10, Panjáb and Bombay each R. 0-15-4, Central Provinces R. 0-6-9, and Madras R. 1-11-7.



BOOK II.

THE LAND-REVENUE SYSTEM OF BENGAL.



CHAPTER I.

THE PERMANENT SETTLEMENT.

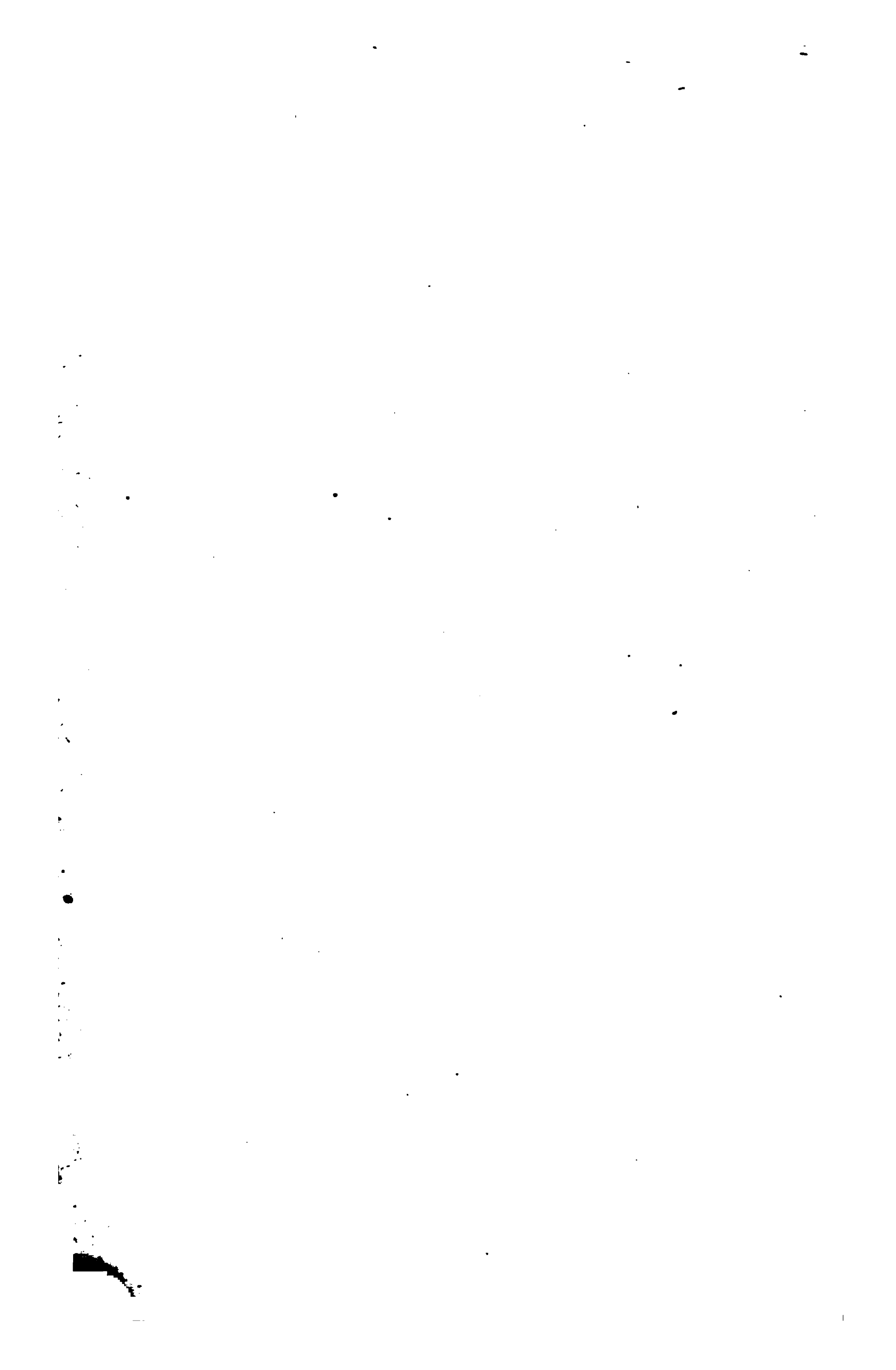
§ 1.—*Introductory.*

THE limits of this work make it necessary for me to plunge somewhat abruptly into the revenue history of Bengal. I have no space to introduce the subject appropriately, or describe the steps by which the East India Company advanced from its first position as a trading Company to that of ruler of the whole country[1].

I can here only briefly state that, first of all, the fort and city of Calcutta were purchased as "taluqs" from the Emperor, and then granted revenue-free; that then the Company was made "zamíndár" of the whole district around Calcutta, namely, the "24-Perganahs," and ultimately obtained a grant of the revenues of this tract also; so that, in fact, the Company became the freehold owner of the district. Then the "chaklás" of Bardwán, Midnapore (Mednipur), and Chittagong were granted revenue-free. Lastly, in 1765 (12th August), the grant of the Diwání, *i.e.*, the right of revenue management and the civil administration of Bengal, Bihár, and Orissa, was made over to the Company, on condition of payment to the Emperor, of a fixed sum of 26 lakhs annually, and providing for the expense of the "Nizámat," that is, the military and criminal part of the administration[2].

[1] A succinct sketch will be found in the Tagore Lectures for 1875, Lecture VII. See also Bengal Administration Report, 1872-73, Historical Summary.

[2] The Díwání is often spoken of as giving the "virtual sovereignty" in the country to the Company. Theoretically, it was not so, because the administration of criminal justice, the appointment of new zamíndárs, and the military control remained to the Mughal Emperor, or his Deputy; but the revenue was the most important thing, especially when coupled with the fact that it was the Company that held the real military power (see this explained in the Tagore Law Lectures for 1872, pp. 26-27).



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This put the Company into virtual possession of the three provinces,—the Orissa of 1765 including only the present Mednipur district, with part of Húglí, not the whole of the country now called by the same name.

§ 2.—*Commencement of British Rule.*

For some time no interference with the native officials was contemplated. In 1769, "Supervisors" were appointed in the hope of improving the administration. They were directed to acquire information as to the revenue history of the province, going back for the purpose to a given era when good order and government were universal; they were to enquire into the real limits of estates held by zamíndárs, the quantity of land they ought to have revenue-free, and the real "rents" or payments which the actual cultivators of the soil ought to make in each estate. Various other improvements were to be made, and especially, illegal revenue-free holdings were to be properly assessed and made to pay. The cultivators were to be protected from the exactions of the zamíndárs, and leases or "pottahs" (paṭṭá) specifying exactly what each man had to pay, were to be granted.

The intention thus to supervise the native revenue administration was no doubt excellent, but it failed entirely; and on the 28th August 1771 the Court of Directors at home announced their intention "to stand forth as díwán, and by the agency of the Company's servants to take upon themselves the entire care and management of the revenues."

That was the beginning of our direct revenue control. But even then, the idea of a settlement and a recognition of the proprietary right in land, had not occurred to the Company's government.

§ 3.—*Sketch of the early Revenue system.*

At first, in 1772, farms of the revenue were given out for five years. The farms were given by "parganas" (small local divisions of a district); unless a pargana gave more than one lakh of

rupees revenue, in which case it was divided. "Collectors" were then appointed, instead of Supervisors, to receive the revenue[3].

The existing zamíndárs were not intended to be displaced by this arrangement; but they often refused to contract, so that other farmers were appointed, and in some cases much injustice was done.

Stringent orders were given to prevent the farmers robbing the raiyats, and to make them adhere to the "hast-o-búd[4]," or list showing the rents which it was customary for the raiyats to pay, and to prevent illegal cesses being collected.

When the five years' leases were about to expire, *i.e.*, in 1776, a new plan was proposed. This time special officers were to be deputed to examine into the real value of the lands, and to conduct enquiries which would secure to the raiyats, the perpetual and undisturbed possession of their lands, and guard them against arbitrary exactions; for the previous efforts to attain this end had failed, especially the plan of requiring the zamíndár or the farmer to give a "paṭṭá" to the raíyat; no such leases were ever granted[5].

When the farms actually expired in 1777, and the report of the Commission had been received, a sort of settlement for one year was ordered. This was made with the existing zamíndárs for the sums which were on record as payable, or such other sums as the Revenue Councils thought proper. Zamíndárís held in shares, or with several distinct rights in them, were farmed to one person. A similar settlement was made in 1778, 1779, and 1780. In 1781, in lieu of the provincial Revenue Councils, a Central Committee of Revenue was formed at Calcutta; but though some changes were introduced with a view to increasing the revenue, the settlement was still made annually.

[3] In the chapter on Revenue business and officials, the history of the Collectors, Commissioners, &c., will be more fully gone into.

[4] Literally (Persian) "is and was;" in fact the actual and customary rent-roll without arbitrary additions to it.

[5] The authority for all this is to be found in "Harington's Analysis." See also Tagore Lectures for 1875.

In 1782 a further attempt was made to regulate the holding of lands revenue-free, to resume and charge with revenue those that were held without authority : the office for registration and enquiry was called the "ba'zi-zamín-daftar."

The yearly settlements (latterly with zamíndárs always, unless expressly disqualified) continued till 1789. The fact was, that while this series of settlements began by almost ignoring the zamíndárs and farming the lands, or holding estates with the aid of a Government "sazáwal," or manager, the plan worked so badly that it had to be given up : the zamíndárs were found to be indispensable, and so came to be more and more relied upon. Nor did the centralisation of the revenue control at Calcutta do any good, because there was no efficient local control as well. The Committee, far removed from the actual scene of operations, knew nothing of the real state of affairs, and the díwáns, or local Government officers, combined with the zamíndárs and others to deceive them.

§ 4.—*A.D. 1786.—Arrival of Lord Cornwallis.*

In 1786 something like the present constitution of European District Collectors was introduced, and the díwáns, or native provincial revenue agents, were abolished. The Committee of Revenue was also made into the Board of Revenue. An attempt was also made to revive the ancient qánúngos, to supervise the zamíndárs. In this year Lord Cornwallis arrived (September 12th) as Governor General. A Statute (24 Geo. III., cap. 25) had already (in 1784) directed a settlement of the revenues on an improved basis, consequent on the failures which had been experienced during the currency of these yearly settlements, the history of which I have briefly sketched. Lord Cornwallis was instructed to carry this direction into effect.

The law indicated, as a means for effecting a settlement, an enquiry into the real "jurisdictions, rights and privileges" of zamíndárs, taluqdárs, and jágírdárs under the Mughal and Hindu Governments, and what they were bound to pay ; it also directed the redress of the grievances of those who had been unjustly dis-

placed in the course of the earlier tentative and imperfect revenue arrangements. The Court of Directors suggested that the settlement should be with the landholders, but at the same time maintaining the rights of all descriptions of persons. As for the revenue, it was desired that there might be a permanent assessment, based on a review of the settlements and actual collections of former years. It was thought that the various enquiries which had been ordered ever since 1765, would have resulted in a sufficient knowledge of the paying capacity of the estates, and therefore a settlement for ten years was ordered on the basis above indicated. The Court then thought that a fixed period of ten years would be better than promising a "dubious perpetuity;" but they directed that, on completion of the arrangements, the whole matter should be fully and minutely reported on, so that they might have an opportunity of settling the whole question, without necessity for further reference or future change.

While these arrangements were in progress, the settlements continued to be annual. Renewed attempts were made to abolish all extra cesses, and to register revenue-free lands.

Elaborate enquiries were conducted as to the real revenues of the different zamíndárís and of the lands of which they consisted, so as to check the total assessments[6].

§ 5.—*Issue of rules for a decennial settlement.*

Meanwhile, the rules for the decennial settlement were being elaborated. They were issued on the completion of Mr. Shore's (afterwards Lord Teignmouth) celebrated Minutes of June and September 1789[7]. The rules for settling Bengal, Bihár, and Orissa (as then constituted) were separately issued between 1789 and 1790.

[6] See Cotton's Memorandum on the Revenue History of Chittagong (Calcutta, 1880), p. 50.

[7] They are printed in the appendix to the Fifth Report of the Select Committee of the House of Commons (1812). There was an edition of this reprinted at Madras in 1866.

When Lord Cornwallis commenced the codification of the Regulations in 1793, these rules (amended and completed) formed one of the forty-three Regulations passed on the same day, and have since been borne on the Statute-book as Regulation VIII of 1793.

This is the law under which the "decennial settlement" of Bengal was made.

§ 6.—*Result reported to the home authorities: the Permanent Settlement.*

When the enquiries had been completed, report was made, as ordered, to the Court of Directors at home. There was much opposition, it appears, in the Council, to making the settlement permanent; but the Court of Directors, in a despatch of September 1792, consented to the proposal, and Lord Cornwallis accordingly declared, by proclamation of 22nd March 1793, the decennial settlement to be "permanent." This proclamation was also included in the Statute-book of 1793, as Regulation I of that year.

The main features of that settlement have already been sketched in the introductory general sketch. They were—

(1) That the zamíndárs were settled with; and as they could not fulfil their obligations to the State, nor take an interest in their estates without some definite legal *status*, they were declared proprietors.

That proprietary right, however, was strictly limited; it was subject, on the one hand, to the payment of revenue to Government, and to liability to have the estates sold *at once* on failure to pay; and it was subject, on the other hand, to the just rights of the old and original cultivators of the soil, "the raiyats," dependant taluqdárs, and others[8].

[8] Some further considerations as to the actual rights of the zamíndár will be offered in the chapter on the land tenures of this province. See also a mass of information in the volumes of an anonymous work published in 1879 (Brown & Co., Calcutta), and called "The Zamíndárí Settlement of Bengal." The author's object is to show, not only that the permanent settlement with zamíndárs has been a great failure;—that, beyond paying the revenue, the zamíndárs have done nothing of what was hoped from them in the way of benefiting tenants or improving their estates;—but, chiefly, to

(2) The assessment was on the basis of the former payments, but in a consolidated form, extra cesses being absorbed; and the total assessment in one lump sum was declared unchangeable and fixed for ever.

§ 7.—*Features of the Permanent Settlement.*

It will be obvious to the reader that no practical object would be gained by our enquiring what was the process of this settlement, which, whatever its merits or demerits, is now a matter of history.

I shall only notice, therefore, some salient features in it which have continued to affect the course of revenue administration in Bengal.

In the first place, unlike all the other settlements, which we shall have to study, the "permanent settlement" did not commence either with ascertaining the boundaries of the estates to be settled, or with a survey. This was perhaps the result of circumstances, and partly also the result of the views entertained as to the nature of the Government revenue and of the proprietary interest which the settlement was to bestow on the landholders.

Nearly all the occupied parts[9] of the districts were divided out into zamíndárís. In a few instances in Bengal, and more commonly in Bihár, the estate was that of a jágírdár, and some estates were

argue that the permanent settlement was intended not only to settle what the zamíndárs should pay to Government, but what the "raiyats," or original occupiers—natural owners, if you please—of the soil, should pay to the zamíndár; and that this part of the work has been never carried out to this day; consequently that, as a rule, the raiyats are wretchedly off.

It is not the purpose of this book to take a side in any controversy; but it must be admitted that a great deal of strong evidence has been produced in favour of this view. See also the various judgments of the Judges of the High Court in the great Rent Case, Bengal Law Reports (Supplementary Volume of Full Bench Cases, p. 202 *et seq.*)

[9] I say "occupied parts," for at that time a majority of the districts, especially those near the hilly tracts, had large areas still waste, but nevertheless forming part of the zamíndárí, or at least claimed as such. Lord Cornwallis stated that one-third of the Company's possessions was waste at the time when the settlement work began. The object of the settlement of 1793 was to recognise *all the land*, waste or culturable, in each zamíndárí, as the property of the zamíndár; but no doubt at that time there was very little certainty as to what was really included in the estate.

held by grantees called taluqdárs[10]. But, whatever the title, the actual allotments of land forming the settled estates were those mentioned in the old native revenue records. There were no maps or plans or statements of area, but the boundaries of the estate were vaguely described in words, and a list of the villages included was given; but the limits of these were very imperfectly known, especially where a large portion was waste. Each zamíndár held a document, or "sanad," under which the Emperor or his Deputy had created the "estate;" and that specified the revenue that was to be paid.

All previous experience had shown that, without organising the districts into small sub-divisions for revenue-administration purposes, it was impossible to dispense with the agency of the zamíndár[1]. Even when each considerable district had one European Collector, aided by a staff of qánúngos, it would have been quite impossible for him to deal with thousands of detailed holdings; how much more would this apply before that date, when, as from 1772-79, there had been only councils or committees for controlling revenue matters—at one time six of them for all the districts included in Bengal, Bihár, and Orissa!

Every effort to hold the estates "khás," that is, to deal direct with the landholders without the intervention of the zamíndár, had proved such a failure, that there was always a return to the old

[10] These titles will be better understood after reading the chapter on Bengal tenures, which may be referred to at this point by the student.

[1] This is very instructive. In Akbar's time, the whole country was divided out into parganas, each with its vigilant revenue ámil, and the parganas even had recognised sub-divisions under petty revenue officers. As long as this was kept working by a powerful Government, the revenue was not intercepted, the people were not oppressed. The moment the Government became too weak to control this machinery, the sub-divisions disappeared, and then the revenue *could* only be collected by the agency of great farmers, who undertook to pay a fixed sum for a certain portion of territory, saving the Government the trouble of going into any detail. This was the system our early administrators found already long established. In the position they were placed, it was utterly impossible for them to have restored the "Akbarian" method, as we have now restored it in Northern India. The tahsíldárs and all the host of local officials trained and able to carry out such a system, are the product of a century of British rule. In 1786 no such persons could have been found.

system. No wonder, therefore, that the zamíndár was finally accepted as the person to be settled with: and this, not as a matter of chance, but as one of deliberate policy, and on administrative grounds. When to this, the reader will add his reminiscence of what has been already stated of the way in which the zamíndár himself increased in power and in his virtual connection with the land, it will appear still less wonderful that he should have been declared and recognised as the proprietor, subject to whatever just rights the people on the land below him possessed or were entitled to[1].

§ 8.—*Method of dealing with the zamíndárs.*

The direct consequence of admitting the zamíndár to the position of an English landlord, was a desire to leave him in the enjoyment, as far as possible, of the independence dear to an English landholder. What need was there, the rulers of those days thought, to harass the proprietor we have established and now wish to encourage, by surveying or measuring his lands and making an inquisition into his affairs? Fix his revenue as it has all along been paid, or correct the recorded amount if it is wrong; sweep away illegal taxes, resume what land is unfairly held without paying revenue, and then leave the proprietor in peace. If some neighbour disputes his boundary,—if there is room to believe that he is encroaching, let them go to law and decide the fact.

Besides this feeling, there was another which at first made a survey unacceptable. Strange as it may appear to European ideas, measurement was looked on with great dread, both by zamíndár and raiyat. Whenever the raiyat had to pay a very heavy rent, or the zamíndár to satisfy a high revenue demand, both were glad to have a little (or often a good deal) more land than they were in theory supposed to pay on.

[1] If I may for once express an opinion, I would say that the failure of the permanent settlement (and a grievous failure it has been) is not due to the settlements with zamíndárs, but to the failure to carry out the intentions with regard to securing the rights and fixing the "rents" of the cultivators (whose rights were also really 'proprietary') under them.

It was always found an effective process under the Mughal rule to threaten a raiyat with the measurement of his lands; for his "rent" was fixed at so much for so many bíghás. If this rent was oppressive, as it often was, his only chance of meeting that obligation was, that he really held some few bíghás in excess of what he paid for, and this would be found out on measurement. But that was not the only danger; the landholder well knew that even if he had no excess whatever, still the adverse measurer would inevitably make out that the land held was in excess. By raising the "jaríb," or measuring rod, in the middle, and by many other such devices, he would make the bíghá small, and so produce a result showing the unfortunate raiyat to be holding more than he was paying for; and enhancement immediately followed. In the same way the zamíndár liked a considerable, or at any rate an undefined, margin of estate to extend cultivation when he was so disposed. Of course, the want of survey and boundary demarcation led, as we shall afterwards see, to great difficulty, and various enactments have been since passed to provide a proper register of estates and a survey to ascertain their true limits; but it is not difficult to understand why this was not at first thought of.

Some curious restrictions were at first placed on the selection of persons to be zamíndár-proprietors. It was at one time attempted to exclude from settlement, not only minors and females incompetent to manage their estates, but also persons of "notorious profligacy" or "disqualified by contumacy." These grounds of exclusion, being of course impracticable to prove satisfactorily, and being sure to give rise to great scandals, owing to the necessity of an enquiry in Court, were ultimately given up. As regards estates of minors and others unable to take care of their own rights, they were placed under the Court of Wards, and managed on behalf of the incompetent owners.

When there were several shareholders in an estate, there was at first a rule to make them elect a manager. This failed, and after a time the law was altered, and they were left to manage as they pleased, but were held jointly and severally responsible for the

revenue. The law, however, permitted a partition and a complete severance of responsibility, if the sharers wished it.

When there were cases of doubtful or disputed boundary, possession was looked to; and if possession could not be ascertained, the estate was held by the Government officers ("khás" as it was called) till the dispute was legally settled.

If the zamíndár declined settlement (which was rare, for those who at first declined when the settlement was to be for ten years, soon accepted when the proclamation of perpetuity was issued), the lands were farmed or held khás, and the ex-proprietor got a "málikána," or allowance of 10 per cent. on the jama' or Government assessment.

§ 9.—*Dependent and Independent Taluqdárs.*

The persons with whom the estates were settled were mostly zamíndárs, but I have mentioned that there were other grantees of the State called taluqdárs. These were sometimes separate grants, outside and "independent" of the zamindár's estate, in which case they paid revenue direct to the treasury. Sometimes they were found inside the estate as it were, and were then "dependent" on the zamíndár, and paid through him. Rules were laid down for determining when the taluqdár was to be settled with separately, and when he was considered as subordinate to the zamíndár—a proprietor in fact in the second grade. In consequence of these rules, a number of estates were separated off, and had the right of paying revenue direct to the Collector. It was, however, intended that this should be done once for all. A few years later it was found that people still kept on asking to have 'taluqs' separated from the zamíndárí, and it became necessary[3] to give a year's grace for such applications, after which no more separations would be allowed.

§ 10.—*Method of assessment;—Akbar's settlement.*

In order to determine the assessment of each estate, no enquiry was made (as under the later Settlement laws) either what the produce was, or what the "rents" were as paid by

[3] Regulation X of 1801, section 14.

the raiyats. Reference was simply made to the old records of the lump assessments under the native rulers; and these were roughly adjusted in cases where such adjustment was needed, and the zamíndár or other owner was directed to pay this sum.

It will be here interesting to enquire what the sums on the old record were, and how they came to be so fixed[4] and recorded. In order to understand this, I must go back to the past history, and present a very brief sketch of what had occurred in the palmy days of the Mughal empire.

During Akbar's reign there was a settlement something like our modern settlements, but not at all like the permanent settlement of Bengal. Akbar, with characteristic shrewdness, employed a Hindu Rája, Todar Mal[5], of great ability, to make it, and associated a Mussulmán with him. The settlement went straight to the actual cultivators of the soil. These, as we have seen, were bound to pay a certain share of the produce to the ruler. The lands were measured, the crop estimated, and an actual division of the produce made.

[4] As regards the actual process by which our earliest Collectors made the assessments for settlement, the following description occurs in an article in the *Calcutta Review* by Mr. Thornton, reprinted in 1850:—

"The Collector sat in his office in the sudder (head-quarter) station, attended by his right-hand man, the kánúngo, by whom he was almost entirely guided. As each estate came up in succession, the brief record of former settlements was read, and the dehsunny (dah-san, ten years) book, or fiscal register for ten years immediately preceding the cession or conquest, was inspected. The kánúngo was then asked who was the zamíndár of the village. . . . . Then followed the determination of the amount of revenue. On this point also reliance was chiefly placed in the *daul*, or estimate, of the kánungo, checked by the accounts of past collections and by any other offers of mere farming speculators which might happen to be put forward."

In such a process the assessment was not so likely to be fixed at an excessive rate, as the rights of individuals to share in the profits left by its moderation were to be overlooked. Mr. Thornton remarks that sometimes a man was put down as proprietor, because his name was on the kánúngo's books, although he had really lost all connection with the estate.

[5] The name of this Rája has been variously tortured into Toor Mull, Toral Mal, and Toran Mal. The palatal *d* in the Hindi Todar is easily pronounced as *r*, so the name got to be Torar Mal, and then misprinted Toran Mull.

Akbar's reform consisted, first, in establishing a standard area measure, or bíghá, and a standard measuring rod to test it with. Next, in classifying the soil into several grades or classes, and then enquiring what a bíghá of each class could be taken to produce as an average. This served as a test. An enquiry was made as to what, in fact, the lands of each class in a given area had yielded during the last ten years (from the 14th to the 24th year of the reign); one-tenth of the total was taken as the average production. The State's share was then to be a certain fraction of this average figure; and that fraction was to be maintained unaltered for the period of Todar Mal's settlement, which was ten years[6]. Todar Mal's object was then to convert this fixed fraction of a known amount of produce per bíghá, into a money equivalent; and so he took the "*ruba'*," or one-fourth of the estimated produce, and valued it in money: this was the cash assessment. But Todar Mal was too wise to enforce such a novelty all at once with crushing uniformity. It was left optional to pay the cash *ruba'*, or to continue the payment in kind; only the cultivator must adhere to one or the other. When he paid in kind, the fraction of the produce belonging to the State was a different weight for each kind of crop on each class of soil. The cash assessment was, therefore, much simpler. In this way a cash assessment for the land became known, and thenceforth the revenue seems to have been always paid in money. This cash rate is spoken of as the original or actual assessment,—the "asl túmár jama'[7]."

§ 11.—*The Síwáí or Abwáb.*

It is not to be supposed that this was never afterwards raised; but it was so by adding certain *cesses* called "síwáí" (*lit.*, "extra,"—"besides") or "abwáb" (plural of "báb," the *heads*

[6] This is described in Lecture III of the Tagore Lectures for 1875, page 68, &c., and in Elphinstone's History, page 541, &c.

[7] Túmár is a record or register, so that the phrase means "the original or simple jama'," or standard assessment on record. As to payment in money being general, see Mr. Shore's Minute of 1789 and authorities quoted in Cunningham's "India and its Rulers," page 172.

or subjects of taxation)[8]. These were calculated on the same principle as the jama', at so much per bíghá, or so many seers in the maund. Akbar endeavoured to abolish these[9], but without success. The ruler's local deputy levied them on the zamíndár, who was authorised to levy them on the cultivators. Besides that, the zamíndár levied more petty cesses on his own account, and so did all the zamíndár's officials—his náib, his gumáshta, &c. When these cesses got numerous and complicated, there would be[10] a sort of compromise; the rate would be re-adjusted so as to consolidate the old rate and the cesses in one, and this would become the recognised rate, till new cesses being imposed, a new compromise was effected. In this way, therefore, the revenue actually paid might gradually rise, and the rates exacted from the cultivators rise also, with more than corresponding frequency. The revenue actually realised was then composed of the asl jama' and these extra charges, and was collectively called the "mál."

§ 12.—*The Sayer.*

Besides this land revenue, there were other imposts not connected with the land, and called "Sáír," or, according to the Bengali writing, "Sayer." These were taxes on pilgrims, excise and customs duties, taxes levied on shopkeepers in bazars (ganj) and markets (hát), tolls, &c. They amounted usually to about one-tenth of the land revenue; they also included charges on the use of the products of the jungle (*ban-kar*), on fishing (*jal-kar*), and on orchards and fruit trees (*phal-kar*).

[8] They were called after the name of the ruler inventing them, or after the nature of the tax. Thus we find the "khás navísí," a tax to support the Government writers of "sanads," &c.; "nazarána muqarrárí," a rate to enable the Deputy or Governor to send his customary annual presents to the Emperor; the "faujdárí," to maintain police; "zar-i-mathaut," comprising several items; "chauth-Maráthá," a tax to meet the loss caused by the cession of part of Orissa to the Maráthás, &c., &c.

[9] Ayín Akbari, Vol. I, 355.

[10] See Mr. Justice (Sir G.) Campbell's judgment in the great Rent Case, B. L. Reports, Suppy. Vol., page 256.

It is easy to understand then that the total revenue which each zamíndár had to account for to the State consisted of two kinds,—the "mál" (above described) and the "sáír."

The sum under each head payable in total for the different "mahâls" or estates included in each zamíndárí, was placed on record and noted also on the sanad of appointment.

§ 13.—*The British assessment.*

The British assessment was made on a comparison and revision of these records as already stated.

But from the very first, an improvement, or at least a simplification of the assessment, was attempted.

In the first place, we have seen that even as far back as the reign of Akbar, attempts had been made to abolish all "abwáb" or "síwáí" collections over and above the actual land assessment.

The British Government persisted in the same attempt: therefore, on settling with the zamíndárs, it consolidated the land revenue into one net sum, and abolished all the cesses, even those which, under the Native Government, were authorised. Unfortunately, though the Government itself forebore any addition on the account "abwáb," and proposed to punish severely the offence of such exaction, still the zamíndár used privately to collect cesses on his own account from the people; and it is certain that even at the present day such cesses are paid by the raiyats, partly under the inexorable bond of custom, and partly from a sense of helplessness. For, though the authorities would at once decide against the exaction, still the zamíndár could always either conceal the fact or colour it in some way, or else make things so unpleasant for the raiyat that he would rather pay and hold his tongue[1].

[1] The private cesses, as distinct from the authorised cesses of old days, are legion. A few names will sufficiently indicate their nature; thus, we find the "mángan," a benevolence to assist the zamíndár in debt; "nájáí," a contribution to cover the loss when the other cultivators absconded or defaulted; "parvani" or "parbani," a charge to enable the zamíndár to celebrate "parvas," or religious festival days. There were also levies for embankments (púlbandi), for travelling expenses of the

The "sáír" items were of course on a more legal and equitable footing. Government, however, abolished them, or rather severed them entirely from the land revenue. Whenever the zamíndárs had

zamíndár, &c., &c. As regards the modern levy of cesses, I cannot do better than quote from the Administration Report of 1872-73 (body of the report, page 23). Those who care to go into more detail will also find, following the extract I make, a list of cesses, showing the variety and ingenuity which their levy displayed.

"The modern zamíndár taxes his raiyats for every extravagance or necessity that circumstances may suggest, as his predecessors taxed them in the past. He will tax them for the support of his agents of various kinds and degrees, for the payment of his income tax and his postal cess, for the purchase of an elephant for his own use, for the cost of the stationery of his establishment, for the cost of printing the forms of his rent receipts, for the payment of his lawyers. The milkman gives his milk, the oilman his oil, the weaver his clothes, the confectioner his sweetmeats, the fisherman his fish. The zamíndár levies benevolences from his raiyats for a festival, for a religious ceremony, for a birth, for a marriage; he exacts fees from them on all changes of their holdings, on the exchange of leases and agreements, and on all transfers and sales; he imposes a fine on them when he settles their petty disputes, and when the police or when the Magistrate visits his estates; he levies black-mail on them when social scandals transpire, or when an offence or an affray is committed. He establishes his private pound near his cutcherry, and realises a fine for every head of cattle that is caught trespassing on the raiyat's crops. The abwáb, as these illegal cesses are called, pervade the whole zamíndárí system. In every zamíndárí there is a náib; under the náib there are gumáshtas; under the gumáshta there are piyádas or peons. The náib exacts a 'hisábána' or perquisite for adjusting accounts annually. The náibs and gumáshtas take their share in the regular abwáb; they have also their own little abwáb. The náib occasionally indulges in a nominous raid in the 'mofussil' (the plain country away from the town or head-quarters). One rupee is exacted from every raiyat who has a rental, as he comes to proffer his respects. Collecting peons, when they are sent to summon raiyats to the landholder's cutcherry, exact from them daily four or five annas as summons fees."

On the other hand, it should not be forgotten that all this need only continue as long as the people themselves choose: but in fact it is the engrained custom and is submitted to as long as it is kept within customary limits. Every petty native official is born to think that "wasíla" pickings and perquisites, are as much a part of his natural rights as air to breathe or water to drink. Nor will the public object as long as he does his duty fairly. When he tries to take too much and does "zulm" (petty tyranny), the people will turn on him, and a conviction for extortion is more or less attainable, according as the culprit still has friends or is generally in the black books.

There is also a bright side to the question: an amicable understanding with a raiyat for some cesses will often obviate a good deal of litigation about rent enhancement. This was the case in Orissa. In Macneile's Memorandum on the Revenue Administration, an interesting notice of the subject will be found. The people complained of certain cesses, and the zamíndár immediately responded by bringing suits under the Rent Act for enhancement, and by *measuring their lands* (see page 170, *ante*).

a real equitable claim, and consequently suffered a real loss by taking away from them the tolls on roads and ferries, or the taxes on bazars and markets established on their lands, they were compensated.

The rest of such taxes (which a civilised Government would maintain), namely, tolls, customs, and excise, the Government itself levied under appropriate regulations, entirely separate (as at the present day) from the land revenue. I have alluded to the fact that under the name of sáír were also included certain reasonable charges (and not in the nature of an impost), such as payment for fisheries, jungle produce, fruit (jal-kar, ban-kar, and phal-kar); these were *excepted* from abolition; but Government handed over the profits to the zamíndárs, allowing them to collect these dues as part of their own rights and profits.

Thus the settlement was made with the zamíndárs for one lump sum of revenue, which was supposed to represent the *whole* of wha they received directly in rent from the raiyats, less about one-tenth allowed to them for their trouble and responsibility[2].

[2] See Regulation VIII of 1793, section 77; and Whinfield's Manual, page 11. In Native times it was the same. The zamíndárs were to pay in the whole of their collections, less only a percentage allowed them for the trouble (called mushahará) together with some allowances called "mazkúrát," which really were deductions for charitable and religious purposes—to keep lamps at the tombs of saints, to preserve the "kadam rasúl" or foot-prints of the Prophet, to give khairát or alms to the poor, to pay the village or minor revenue officials, to support the peons or messengers to keep up the office, &c., &c.

If anything is wanting to show how utterly unlike a "landlord" the "zamíndár" originally was, this will supply the want. He got *nothing in the nature of rent* from the land. The actual "raiyat" took the balance of its yield after paying the Government share (the balance to him being often small enough), and the zamíndár had to account to Government for the whole of his receipts, getting back only such allowance as the State made him to keep up his office, &c., and to remunerate him for his trouble. Whatever he made for himself was derived from revenue-free land, held as "nánkár," or from the levy of cesses. In time, it is true, he *came to* get something very like rent. When the later Native rulers contracted with the zamíndár for a fixed sum, this was soon to be regarded as something apart from the total rents paid in by the raiyats. In the same way our system almost inevitably tended to regard the zamíndár's jama' in the same light, and gradually provided laws for the recovery of the raiyats' payments as "rent" and for their enhancement under certain circumstances.

This tenth, together with the sáir income and what they could make by extending cultivation and improving existing farms, was the profit which constituted the value of the proprietary title.

§ 14.—*The Settlement Rules.*

The settlement rules of 1789–93 laid down for Bengal, Bihár, and for Orissa (as it then was) separate principles of assessment. In Bengal and Orissa, the actual revenue of the preceding year, or some year nearly preceding (which was to be compared with the accounts, and tested by the information which the Collector had acquired), was to furnish the standard of assessment. In Bihár, the standard was to be the average produce of land in any ordinary year, which would give a fair and equitable assessment. If any land had paid a fixed revenue for twelve years past, that was to be accepted as the settlement rate.

With the single exception, then, of Bihár, where in many cases former accounts were not forthcoming, and where consequently an estimate of the produce of an ordinary year had of necessity to be made, there was nothing required as the basis of assessment, but a reference to old accounts, with such consolidation and checking of separate items and abolition of objectionable ones, as the declared principles of Government rendered necessary[3].

§ 15.—*Lákhiráj lands.*

Connected with the subject of the settlement must be mentioned the action taken with respect to "lákhiráj," or revenue-free lands. At all times grants of this kind had been made, chiefly either for charitable and religious purposes, or as rewards, or to enable the

[3] In the Introduction I mentioned that many of the Collectors and those on the Board who knew actual revenue work, felt how very unsatisfactory such an assessment was; and while all were willing enough to have it tried for ten years on the original order, they were aghast at the idea of making such an assessment permanent. Lord Cornwallis, however, minuted against Mr. Shore (the ablest of the advocates for a ten years' trial before further action) and insisted on declaring the "land-tax"—as he considered it no doubt—permanent. (Regulation I, 1793, section 2.)

grantee to keep up a military force to aid the sovereign. The nature of such grants I shall further detail when I come to describe the land tenures of Bengal. The number and extent of them came to be very greatly increased in later days, when bad government brought at once extravagant expenditure and a diminished revenue. Then it was that the ruler, being unable to pay cash salaries, began to remunerate his zamíndárs and other officials by grants of land called "nánkár," or land to get one's bread by, and "chákarán," or land for support and payment of servants (chákar). Revenue-free grants also were made, not as they ought to be, always by the supreme ruler, or at least by his great provincial Súbadár or Deputy, but by all sorts of unauthorised subordinates.

And this state of disorder tended more and more to diminish the revenue, since a zamíndár would soon show, under one pretence or another, that a portion of his land was exempt from payment. Some he would declare was his own land—"nij-jot;" some was his nánkár, or allowance for service; more was "khámár," or waste which he had cultivated; some was granted revenue-free to some one whom he had no control over; some was free for support of police posts or "thánas;" some was charged with pensions which he had to pay. All these matters our Collectors had to enquire into and put straight. The zamíndár was relieved of the responsibility of paying pensions and supporting the police posts[4], but the lands said to be free for such purposes were assessed and the assessment added to his jama'.

The zamíndár was next allowed his own nánkár, nij-jot and khámár lands revenue-free, when he could prove a reasonable title to them, going back to before 1765 (the year of the commencement of the Company's rule by grant of the Emperor), and could show continuous possession.

[4] Thánadári lands were resumed and assessed (see Regulation XXII of 1793, section 3); "chákarán lands," for the support of *village* watch, were left in the estates and no extra assessment charged (Regulation VIII of 1793, section 41)

§ 16.—*Resumption of invalid grants.*

As regards the general question of assignments of the revenue, or grants excusing the payment of revenue by certain persons in possession of the land, these were to be examined into and resumed or held valid, according to certain rules which were first contained in Regulations XIX and XXXVII of 1793. But these rules failed completely, and in 1819 a new Regulation was passed to provide for the more effective investigation of the subject. This, however, succeeded no better, and lastly, in 1828, a Regulation for the appointment of Special Commissioners was passed. Even this plan seems not to have been very successful[5], and the Commissioners were at length abolished in 1846, since which time the special enquiry has been practically given up. Of course any grant appearing at a later time could always be called in question if it appeared invalid under the law.

When these grants were found to have been made by the royal power they were called "bádsháhi;" when made by subordinate officials, they were called "hukámi." As might be expected, many of the latter were made without any proper authority, but still the British Government desired to deal very liberally with persons who had really been long in the enjoyment of such grants. Speaking generally, *all* grants (by whatever authority) made previous to 12th August 1765 (date of the Díwání), if accompanied by *boná fide* possession, were recognised as valid, and all of later date, if made without proper authority, were (with some few reservations) declared invalid[6].

But it was determined that when the grant did not exceed 100 bíghás, its resumption and assessment were to benefit the proprietor

[5] There are of course a large number of intermediate Regulations modifying the original orders, and introducing new provisions; but I do not think it necessary that the student should be troubled with them.

[6] Markby: Lectures on Indian Law, page 3. There were rules which allowed only a partial resumption, *i.e.*, did not entirely take away the privilege, nor yet entirely excuse payment, but allowed a light assessment on grants made after 1765, but before the Company assumed the actual management in 1772. I do not propose to go into so much detail.

or the zamíndár of the estate within whose limits the land lay, and not increase the Government revenue. Only when it exceeded 100 bíghás, was there to be an increase to the jama', in which case the revenue was to be settled in perpetuity[7]. The land might or might not belong to the zamíndár within whose estate it lay. The larger grants were probably held by grantees other than the zamíndár, and then they became separate or independent taluqs with their own revenue assessment.

Revenue due on invalid grants of less than 100 bíghás was (as just observed) for the benefit of the zamíndár to whose estate they belonged, and such lands became "dependent" taluqs. As the zamíndár was thus directly interested in "resuming" or charging "rent" on the smaller plots, at first the law left the matter entirely in his hands, and he might resume without reference to any Court or Revenue authority. Not only so, but the *grantee* had to prove his non-liability to pay, in case he disputed the resumption. At first the zamíndárs, restrained some by popular feeling against resumptions, did not use the power, but after a time, and especially in certain districts, they began to do so; it was then necessary to alter the law; and now every such resumption must be by decree of Civil Court.

§ 17.—*Original design of Land Registration.*

It will next be asked, what attempt was made to prepare registers of estates and records of other rights under the Permanent Settlement?

This subject does not seem to have attracted much attention at the time. As there was no survey or demarcation of estates, the only thing that could be done was to prepare a descriptive register showing names of the estates and the villages, and the local subdivisions of land included in it. But the first rules for such a registration, were both imperfect and impracticable. They were

[7] Regulation XIX of 1793, sections 6-8; and Regulation XXXVII of 1793, sections 6-8.

never carried out, and there is no occasion therefore to go into detail on the subject[8]. It was only intended to show the estates of separate revenue-paying proprietors and the detail of the villages or groups of villages forming whole parganas in them. Often the estates had outlying portions, some even in other districts—these portions are spoken of as "qismatiya" villages[9].

§ 18.—*Registration of Under-tenures.*

No registration of under-tenures, or record of the nature and extent of the rights in them, was made.

The full consideration of these "under-tenures" belongs to another chapter; but a few lines introduced here, may make what follows more intelligible. If no zamíndárs had ever existed or grown into power, the original holders of land in the villages would, in the nature of things, have been the "proprietors." But the zamíndár coming in as a superior, all of them sunk to an inferior position, but not all in equal grade: for those who were the original hereditary possessors of land sometimes were strong enough to secure their position by getting a grant of their land in taluq, or by a permanent lease with or without fixity of rent:—others who did not gain these advantages would still be entitled by

[8] I do not mean by the failure of the early records, to imply that the authors of the permanent settlement purposely avoided a record. On the contrary,—"The original intention," says Sir G. Campbell, "of the framers of the permanent settlement was to record all rights. The kánungos and patwárís were to register all holdings, all transfers, all rent-rolls, and all receipts and payments, and every five years there was to be filed in the public offices a complete register of all land tenures. But the task was a difficult one: there was delay in carrying it out. English ideas of the rights of a landlord and of the advantage of non-interference began more and more to prevail in Bengal. The Executive more and more abnegated the functions of recording rights and protecting the inferior holders, and left everything to the judicial tribunals. The patwárís fell into disuse, or became the mere servants of the zamíndárs: the kánúngos were abolished. No record of the rights of the raiyats and inferior holders was ever made; and even the quinquennial register of superior rights which was maintained for a time fell into disuse."—(Sir G. Campbell's Land Systems of India. Cobden Club Papers, p. 148.)

[9] "Qismat," a part or portion separated off.

the voice of custom (which even the zamíndár could not wholly ignore) to be hereditary tenants, and to pay only customary rent.

The Settlement Regulation, however, though by no means ignoring such rights or wishing to destroy them, thought it enough to determine, in the case of the estates called "taluqs," whether they were to be separated as distinct proprietary estates, or left as under-tenures subordinate to the zamíndár. If the latter, the law secured the terms of the tenure to the holder. In the same way long leases, either perpetual (istimrárí) or at a fixed rental (muqarrarí), were protected from alteration. All other lands were to be "let" (under prescribed restrictions—which were soon removed—as to form of lease and length of its duration) in whatever manner the zamíndár might think proper; only the zamíndár was required (1) to make the terms definite; (2) to revise the existing accounts which caused the raiyat to pay both his "asl" and extras or abwáb, and consolidate the rent into one lump sum; and (3) to charge no new cesses[10].

Ancient or hereditary raiyats were protected in paying only at the established or customary rates; and even when the estate was sold for arrears of revenue (which cancelled all under-tenures and existing contracts), the resident or hereditary raiyats were still protected, and could not be ejected unless they refused to take from the purchaser a pattá at the established rates. The want of proper authoritative registers of such tenures and their holders long continued; and it is only of late years that the registration has been put on a better footing. A notice of the present practice, however, belongs to a later stage of our study.

[10] At first an attempt was made to compel the grant of pattás in a particular form, but this was given up. The raiyats did not understand the pattás as any protection, but rather regarded them as instruments of exaction, since few could read and write, and so they were afraid of being made to sign for more than they thought that they, by custom, ought to pay. Afterwards, when the people became more advanced, the value of the written "pottah" as a protection became more appreciated. By the modern law (see Bengal Act VIII of 1869, section 2) every raiyat is entitled to a lease, showing exactly his land and its boundaries, the rent he is to pay, and all particulars, so that there can be no mistake nor exaction of any payment above the agreed rent, unless the raiyat through ignorance or fear chooses to make it.

§ 19.—*Results of the Permanent Settlement.*

The results of the permanent settlement were far other than was expected.

There can be no doubt that at first the revenue levied from the zamíndárs and others made proprietors was heavy; but as the effects of British peace and security made themselves felt, and as the value of land and its produce rose, and waste lands were brought under the plough, the assessments became proportionately lighter and lighter[1]. And it must be borne in mind that every estate at the time of its original assessment contained considerable, often very large, areas of culturable waste; and as this was entirely unassessed, all extensions of cultivation were the clear profit of the zamíndár[2].

Before, however, these changes began to tell, the assessments, though not excessive, were heavy enough to necessitate diligence and prudence; and the zamíndárs were not able at once to keep pace with the inflexible demand. In return for the benefits it conferred, the Government required punctual payment and no remissions. The zamíndárs were, moreover, unprovided by law with the means of enforcing from the "raiyats" the payments that were due by them, with the same rigid punctuality. The consequence was a very widespread default. At that time the law stood only to enforce a *sale* of the estate (or part of it), directly the zamíndár was in arrears, and it followed that large numbers of estates were put up to sale.

[1] The revenue assessed in 1790-93 was about 3 millions of pounds, and the zamíndárs were estimated to get as their rent a sum equal to about a tenth of the assessment. They no doubt got more; but even if we say a fifth, instead of a tenth, the rental would be under a million, whereas at the present day the net rental taken by the permanent settlement holders is over 13 millions, and the revenue they pay is 3½ millions, the original assessment being increased (but only slightly) by the effect of assessment of resumed lands, unassessed waste, and so forth, in the course of nearly a century.

[2] Government no doubt afterwards resumed and assessed separately, some large areas of waste, but it was waste improperly or fraudulently annexed to the estate. Many, if not most, estates had a great deal of waste which was confessedly included in their boundaries.

"In 1796-97," says the late Mr. J. Macneile[3], "lands bearing a total revenue of Sicca[4] Rupees 14,18,756, were sold for arrears, and in 1797-98 the jama' of lands so sold amounted to Sicca Rupees 22,74,076. By the end of the century, the greater portions of the estates of the Nadiyá, Rájsháhi, Bishnpur and Dinájpur Rájas had been alienated. The Bardwán estate was seriously crippled, and the Birbhúm zamíndárí completely ruined. A host of smaller zamíndárís shared the same fate. In fact, it is scarcely too much to say that within the ten years that immediately followed the permanent settlement, a complete revolution took place in the constitution and ownership of the estates which formed the subject of that settlement."

In 1799 the Legislature invested the zamíndárs with a better power of recovering "rents" from their raiyats; and thenceforward the Government revenues were collected with greater ease.

One effect of the "Sale Law" was to reduce very greatly the size of the zamíndárís, for often they were sold piecemeal. The making into separate estates of taluqs, the owners of which established a claim to be dealt with separately from the zamíndárs, and the effect of partitions, has also tended to the same result: but this, as already remarked, was put a stop to in 1801[5].

In Bengal proper more than 89 per cent. of the estates are now under 500 acres; about 10 per cent. are between 500 and 20,000 acres, and less than 1 per cent. are of 20,000 acres and upwards. In Chittagong, however, the estates were always small, and in Bihár there never were any very large zamíndárís.

[3] Memorandum on the Revenue Administration of the Lower Provinces of Bengal (Calcutta, 1873), page 9.

[4] The "sikka" was the first rupee struck (in 1773) by the Company at Múrshídábád, but still bearing the name of the Mughal Emperor Sháh 'Álam. It contained nearly 11 grains (Troy) more pure silver than the "Company's rupee" introduced in 1835.

[5] See Regulation I of 1801 and Regulation VI of 1807.

§ 20.—*Districts affected by the Permanent Settlement.*

The permanent settlement extended over the following districts in Bengal, as the districts are now constituted :—

BENGAL .	Bardwán. Bankúra. Birbhúm. Húglí. Howrah. 24-Pergunnahs. Jasúr (Jessore).	Nadiyá. Múrshídábád. Dinájpur. Málda. Rájsháhi. Rangpur. Bágurá (Bogra).	Pabná. Maimansingh. Farídpur. Bákirganj. Chittagong. Noakháli. Tipperah (Tipra). Dákha (Dacca).
BIHÁR .	Patna. Gáyá. Sháhábád.	Muzaffarpur. Darbhanga. (These two form the old Tirhút District.) Sáran. Champáran.	Purniya (Purneah). Bhágalpur. Munger (Monghyr).

SONTÁLIA.—Part of the Sontál Parganas adjoining the Regulation Districts.
ORISSA . . Mednipur (Midnapore) except one or two parganas which were settled along with Katák (Cuttack).

Some estates in the Mánbhúm, Singbhúm, Lohárdagga, and Hazáribágh districts (now in the Chutiyá Nágpur Division) came under permanent settlement, because they were then in collectorates which formed part of the Bengal or Bihár of that date.

Part of the Jalpáigúrí district also was permanently settled, under the same circumstances.

A portion of Sylhet was permanently settled, but the settlement did not extend to Jaintiya, nor did it touch anything but the lands under cultivation at the time. This district will be alluded to under the head of Assam, in which Province it is now included. Part of Goálpára (also in Assam) was included in the permanent settlement[6].

[6] The results of the settlement, and the condition of the tenants under it, both in Bihár and Bengal, as questions of social economy, are well stated in Mr. Cunningham's "British India and its Rulers" (page 166 *et seq.*) Such questions, interesting as they are, are evidently outside the scope of a Revenue Manual.

CHAPTER II.

THE TEMPORARY SETTLEMENTS.

SECTION I.—THE ESTATES LIABLE TO TEMPORARY SETTLEMENT.

§ 1.—*Districts not permanently settled.*

THE list of districts with which I closed the last chapter shows that some parts of the Bengal Lieutenant-Governorship, as at present constituted, did not come under permanent settlement. The exceptions are (1) districts which are not in a condition to be brought under any formulated revenue system; they are possessed by Native Chiefs under political superintendence; they pay a sort of fixed revenue or tribute to Government, and manage the details of the "rents" or revenues of their own subjects without direct intervention of any British revenue law. Such are the mountainous portions of the Tipperah and Chittagong districts, called Hill Tipperah (belonging to the Mahárája of Tipperah), and the Hill Tracts of Chittagong. Such also are some of the Chiefships under old South-West Frontier Agency in the Chota (or Chutiyá) Nágpur Division, and the Orissa Tributary Mahála. With these this Manual is not concerned.

The districts with which we are concerned may be grouped as follows:—

(2) There are certain estates, situated in the midst of districts permanently settled as a whole, which come under temporary settlement.

(3) There are the districts of the Katák province (Katák, Bálásúr and Púrí) temporarily settled. In both (2) and (3) the settlement law is Regulation VII of 1822.

(4) There are certain districts, such as Darjiling, the Western Duárs (in the Jalpáigúrí district), a portion of the Sontal

tál Parganas, and certain districts in the Chutiyá Nágpur Division, in which the settlement arrangements are of a special character.

I shall therefore proceed first to explain how it is that estates under temporary settlement are found in the midst of permanently settled districts; I shall next (after some remarks on the Orissa temporary settlements) describe the procedure of a temporary settlement; and lastly I shall devote a section to the notice of the fourth class, the specially settled districts.

§ 2.—*Lands not included in the permanently settled estates.*

A large class of estates temporarily settled is represented by the lands which were found not to belong really to, or to be included in, the permanently settled estates, but to have been at the time of settlement unpossessed itself. I have mentioned that there was no survey or demarcation; hence the exact limits of a zamíndárí could not in all cases be accurately known. In fully-settled parts of the country, where the limits of one estate touched the limits of the neighbouring ones, there was perhaps no room for doubt. But in many it was not so; large tracts of culturable but not occupied waste adjoined, and the question arose, how much of this waste is really part of the estate? All that the Collector had to guide him was a written description of the lands, often in the vaguest terms. The estate extended on the north "in the direction" of such and such a town or road, miles off perhaps. It was bordered on the south by the "field where the red cow grazed," or some other detail no more promising. It was always intended that every acre, really forming part of the estate in 1793, should come under the *ægis* of the settlement; such waste might be brought under the plough for the sole benefit of the proprietor, no increased assessment being demanded. This was one of the means by which the estate, it was hoped, would become profitable. But it was never intended that the estate-holders should encroach beyond their real limits, and annex, to their own benefit, large areas of land, which properly belonged to the State. The second Regula-

tion of 1819, therefore, declared that such excess was liable to assessment. It instanced, as land liable to such assessment, islands and alluvial accretions formed since the permanent settlement; lands cultivated in the Sundarbans (the tract of alluvial land intersected with creeks between the mouth of the Húglí on the west and the Megna river on the east[1]); and certain waste plots given out under lease, within the actual limits of permanently settled taluqs, but expressly excluded by terms of the pattá or lease from the operation of the settlement. But this Regulation did not say anything about the *ownership* of the land, only about its being *assessed*. Some would naturally belong to Government, *e.g.*, alluvial lands and islands not forming part of estates; but otherwise it was not the intention of the Regulation to eject or disturb the possession of the occupiers when that was a settled thing, but simply to secure the Government revenue. Indeed, Mr. Macneile says[2] that when the occupants of such lands refused the terms of settlement they were allowed "málikána," which shows they were considered owners. Such lands are called "taufír," or "excess" over and above what was originally included in the settlement. At first it does not seem that any great care was taken about such cases. If there was any show of possession, the proprietorship was allowed, and the land was assessed. Under the Regulation of 1793 the assessment was permanent[3] whenever Government transferred

[1] And forming the southern or delta portion of the districts of the 24-Pergunnahs, Jessore and Bákirganj.

[2] Memorandum, section 167. Regulation III of 1828, however (though passed primarily to legalise the appointment of Commissioners to settle cases of invalid tenure), alludes to the case of unoccupied lands, and removes any possible doubt about their being State property. Indeed, in one place the Regulation goes beyond this, since it declares the Sundarbans to be State property, *although* parts of it had been occupied before 1819. The Regulation was not apparently acted on before a considerable area of the lands alluded to in the Regulation of 1819 had been allowed the benefit of a *permanent* settlement. Such lands are chiefly on the high ground on the northern limits of the Sundarbans, and represent encroachments from the regularly settled estates beyond.

[3] Regulation I of 1793, section 6. And so when a zamíndár's land was 're-sumed' as being claimed under a grant which proved invalid, the land was settled permanently.

or absolutely gave up the proprietorship. But in cases where there was no show of proprietorship, the land remained in the hands of Government, and might be leased on special terms, or reserved for subsequent use or disposal as the case might be.

A few years later (1828) the subject was more fully entered into, and then the right of Government to all unowned lands was distinctly asserted; and as in the course of the years between 1819 and 1828 the temporary settled Regulations had been passed, the settlement of all unowned or unauthorisedly occupied land was temporary, as long as Government retained the proprietary right in it.

§ 3.—*Other lands liable to settlement.*

Then, again, there may be lands forfeited for crime, or escheated owing to failure of heirs. In these cases the estates become the property of Government, and require to be settled.

So also when estates (whether permanently settled or not) are sold for arrears of revenue, and no one bidding, Government buys them in; all previous arrangements become cancelled, and such estates when re-settled, come under temporary settlement with farmers or others as tenants of Government, the proprietary right accruing to Government. If Government parted with the right, it would be bound to give a permanent settlement, as section 6 of Regulation I of 1793, above alluded to, is still in force[4].

So also with alluvial lands that are liable to assessment as accretions to estates. These may be private property liable to assessment, or (under the operation of the Alluvion law) be Government property[5] if they form against estates which belong to Government.

[4] This was recognised when the Government of India put a stop to Sir G. Campbell's sales of proprietary right on a temporary settlement (which was illegal). See Board's Rules, Vol. I., Chap. III, section II, art. 7.

[5] I shall not in this Manual attempt to go into detail on the subject. The Settlement Manual of 1879 (section XII) gives much information which may be referred to. The assessment of alluvion is dependent on a survey (which is not made oftener than once in ten years—see Act IX of 1847) of lands liable to river action. There are special rules for these dearah surveys as they are called (diyara = island). Land that re-forms on the site of land which was once permanently settled is not liable to

This sufficiently explains, if it does not exhaust, the kinds of estates that may come up for settlement even within the districts affected by the permanent settlement. It may be added that, though the labour involved in these temporary settlements is considerable, the area under them yields only about 8 per cent. of the total land revenue[6].

Of these lands I have before observed that some of them may be *private* property subject to Government assessment, and some are Government property. But all the lands are equally brought under settlement operations[7].

§ 4.—*Districts illustrating the foregoing remarks :—Chittagong.*

Before I pass on to describe the rules of the TEMPORARY SETTLEMENT, I may take occasion briefly to describe two districts which illustrate forcibly the effects of the Regulations of 1819 and 1828 regarding the right to assess (and under the latter to claim also) the lands not included in the estates permanently settled.

Chittagong[8] is one of the eastern districts of Bengal between the sea-coast and the hills which separate Bengal from Burma. The soil is rich, but in 1793 a large portion was, as might be expected, still covered with luxuriant and tangled jungle, the clearances being chiefly in the level plains suited for rice-lands. There had

re-settlement. But new land added is a new estate in fact; it may be either settled as such apart from the old estate, or may, with the consent of the Collector, be incorporated with the parent estate. Act XXXI of 1858 regulates settlements of alluvial accretions to estates.

[6] Macneile's Memorandum, section 23.

[7] An example from actual fact will illustrate these remarks and show how the lands of a district may, far revenue purposes, come under various categories. In the Tipperah district the estates are classified as follows (Statistical Account, Bengal, Vol. VI, pages 400-40) :—

	No. of estates.
(1) Permanently settled estates (of 1793)	1,262
(2) Resumed lákhiráj (do.)	98
(3) Islands, &c , settled under Regulation II of 1819 . . .	103
(4) Estates sold out and permanently settled (Regulation VIII of 1793, section 6)	167
(5) Taluqs and ijáras temporarily settled	241

[8] Properly Cháṭṭágráoṅ,

been no natural opportunity, save in exceptional cases, for the growth of large zamíndárí estates. The different settlers formed groups or companies, and each cleared one plot here and one there. The leader of the company was therefore looked on as the superior owner of the whole of the plots. The group, which was by no means always contiguous, was called a "taraf;" and the person who was at the head (or his descendant) was called "tarafdár." Such settlers were called on by the Muhammadan conqueror for help and feudal service, and were recognised as jágír grantees of the land by *stated area*. So also tarafs were founded by the military force sent to defend the province, and these tarafs were also held in jágír in lieu of pay. The consequence was, as early as 1764, *all the occupied lands* (which alone came under settlement) having been granted by area, had been actually measured[9]. The permanent settlement then *extended only to the measured lands as they stood in 1764.*

All land cultivated subsequent to that, is locally spoken of as "noabad" (nau-ábád = newly cultivated). And the ways in which this nau-ábád came to be cultivated were various. Under Regulation III of 1828, such cultivators would have no title whetever; but this was not at first looked to: assessment was the first object.

In the first place the "tarafdárs" began to encroach on the waste all round and extend their cultivation without authority. This led to repeated re-measurements on the part of the authorities, and to a great deal of oppression and bribery, owing to the action of informers and others who threatened to inform regarding the encroachments, if not paid to keep silence. A great number of other persons, mere squatters, also cultivated lands.

§ 5.—*The Noabad Taluqs.*

All the "nauábád" lands could claim nothing but a temporary settlement. It happened, however, that one of the old estate-holders laid claim by virtue of a sanad, which afterwards proved to be

[9] See Chapter III, on Tenures, for some further remarks on the "taraf." See also Cotton's Memorandum on Revenue Administration of Chittagong (1880), pages 7, 8, 10.

forged, to have had all the waste in the district granted to him in 1797. An immense correspondence, ending in a lawsuit, followed, and lasted for nearly forty years[10]. The result was that Government recovered its right, but had to allow the zamíndár so much land as really belonged to his original estate. This could not be found out without a survey, and the opportunity was taken to survey the whole district, with a view to the proper separation of the old permanently settled lands of 1764 from the nauábád lands. The process took seven years to complete (from 1841-48), and the settlement was made by Sir H. Ricketts. All the "nauábád" lands were surveyed, whether held by squatters or taken by encroachment by the original tarafdárs; but each plot separately occupied was, as a rule, formed into a separate taluq, though some few were aggregated: 32,258 little estates were thus formed. A small number (861) of these, that paid Rs. 50 revenue and upwards, were placed directly under the Collector, and the host of smaller ones were grouped into 196 blocks, each of which was at first given out to a "circle farmer" to be responsible for collecting the revenue. The system was afterwards abandoned in favour of khás management by aid of local Revenue Officers.

Nor was this the only trouble in Chittagong. The invalid revenue-free grants, to which I have already alluded as liable to resumption and assessment, were peculiarly numerous and intricate; even after relinquishing all cases in which the holding did not exceed 10 bíghás, there were still 36,683 petty estates separately settled. Many of these had to be permanently settled under the law alluded to previously (see page 192). There were also a large number of small grants or leases made by the revenue authorities and called clearing or "jangalbúrí" leases[1].

Thus, the Chittagong district consists of a mosaic of petty estates; here a plot of old permanently settled land, next a jangal-

[10] When the fraud was discovered Government dispossessed him of the whole, without discriminating those lands to which he had a just title, from those fraudulently obtained. The Sudder Court decreed in his favour for the *original* estate, but gave Government the rest. (Macneile's Memorandum, Chapter IV.)

[1] There were 1,290 of them, of which 1,002, settled originally for 25 years, gave only Rs. 2,475 revenue between them!

búri plot, then a recovered and assessed encroachment, next a squatter's noabad taluq, next a resumed lákhiráj holding; and in all or some of them, the proprietary right may be very different.

And, then, the question arose, what sort of title was to be conceded to the people who held these nauábád taluqs and had been settled with? Various plans were proposed; at one time a permanent settlement was offered, but under such conditions that only a very few taluqdárs accepted it. Afterwards this was completely abandoned. The exact position of a nauábád taluqdár long remained doubtful. But it has now been settled by an order of Government, to be that of a tenure-holder in an estate the property of Government. The holder is entitled to retain possession on the terms of his present lease (of 25 or 50 years), and on the conditions of the existing settlement. On the expiry of the current settlement, he will be entitled to continue, if he accepts the terms of the re-settlement. If he does not, he forfeits all right to the tenure.

The temporary settlement of 1848 was made for 50 years in the case of those táluqs which had their cultivation pretty fully developed, but for 25 only in the jangalbúrí taluqs where much land was still waste. These latter are accordingly now under settlement[1].

The case of Chittagong is so curious that I feel sure the reader will hardly regret the time spent in studying it.

§ 6.—*Case of the Sundarbans.*

I must briefly allude also to the Sundarbans, because the Forest Officer has an interest in these tracts; and they again illustrate the case of lands which are not covered by the permanent settlement.

The estates, that were originally either encroachments by the zamíndárs of the neighbouring settled districts, or were brought under cultivation by permission in early days, as "patítábádí" taluqs, are found on the higher parts of the delta, *i.e.*, along

[1] The work began in 1875-76; by 1879, 458,540 acres had been surveyed, leaving 189,168 acres still to be done 435 taluqs or estates had been assessed at rates averaging 2-6-10 per acre (Stack's Memorandum).

its northern limit; these were held to come under Regulation II of 1819, and were permanently settled with the zamíndárs of the adjoining districts. All other squatters, however, would, under the Regulation III of 1828, have no title whatever, even though settled with for revenue.

That this is so in principle there can be no doubt; indeed, it has been so decided by the High Court and by the old Sadr Díwání Adálat; but, practically, the orders that were passed respecting the settlements of the several blocks of cultivated land must be looked to in each case, since these may contain admissions or recognitions of title, modifying the principle, and which it would be inequitable to ignore. Lastly, there have been from time to time rules for disposal of the waste; and though none have been very successful, still a considerable number of private estates have grown up under them.

There still remain large areas covered with peculiar and characteristic tree growth, from which forest estates have been selected for preservation.

§ 7.—*Waste Land Rules.*

It should be here stated that when plots of land still waste are, under the modern "Waste Land Rules," given out to lessees, they are not settled under the Settlement rules, but are specially provided for by the terms of the grant.

§ 8.—*Statistics of temporary and permanently settled estates.*

The following figures will give a good idea of how the lands of Bengal are distributed, as regards their forming estates permanently settled, or temporarily settled.

They are taken from the Board's Revenue Report of 1879-80. The four classes will be easily intelligible to the reader. The 3rd class indicates estates where the proprietary right is vested in Government, though the position of the "tenant" under Government, is, to all practical intents, almost as good as that of a proprietor of his holding. In the few estates called

"Raiyatwárí" the individual holders are recognised as separately assessed "occupants" or owners of their holding just as people are in Bombay or Madras. These estates are very few and are scattered. Thus 6 are in the Darjeeling and Jalpaigúri districts, 5 in Sáran, 5 in the districts of the Bhágalpur division, and 5 in Lohárdagga and Singbhúm.

Year.	Class I.	Class II.	Class III.	Class IV.
	Number of permanently settled estates.	Temporarily settled estates.	Government estates.	Raiyatwárí.
1878-79 . .	138,031	7,606	2,573	23
1879-80 . .	139,049	7,643	2,618	22

Section II.—The Settlement of Orissa.

I have mentioned that this system of settlement has been applied to the whole of the districts in Orissa, called Bálásúr, Katák (Cuttack) and Púrí.

In 1803 Lord Wellesley conquered these districts from the Maráthás, and the country consists of two main portions—(1) that along the coast formerly known as the "Mughalbandi," comprising the districts of Bálásúr, Katák (certain parganas in the Mednipúr district were also settled along with it) and Púrí; (2) the hilly tract further inland forming the "Tributary mahâls;" this was formerly called the "Rájwára" and was held by chiefs called "Khandaits." The territory of each chief is called his "qila'[3]." The Maráthas settled with them for a fixed quit-rent or tribute called "tanki."

On first coming into our possession there was a distinction made between the Khandaits on the east, *i.e.*, nearer the coast districts, and those further inland and in the hills; the latter were, and still are, left as semi-independent chiefships, paying a fixed tribute; but

[3] *Lit.* "a fort," a name significant of the nature of the territory. The chief in fact held as much as he could protect and shelter from the walls of his fort; that at least is the idea involved in the term.

fifty of the qila's nearer the level country were at first assessed at full rates and treated as ordinary zamíndárí estates.

The first settlement was made in 1804, and was legalised by Regulation XII of 1805. Under this the rights of the "qila'dárs" were defined, with this result, that *all* but eleven were left in a state of semi-independence, under a Superintendent, were exempted from the Regulation law, and were liable to pay only a fixed tribute, while the eleven qila's were incorporated with the districts, but allowed a fixed revenue not liable to increase. Two other estates of this kind were afterwards allowed a permanent settlement. One of these estates, Khúrdá, became a Government estate in 1804, having been forfeited for rebellion. It was formerly settled[4], under the procedure I have just described, with the raiyats; the revenue is collected by sarbarákárs, who receive a commission of about 20 per cent. in cash or land on the revenue of a mauza or village. The existing settlement is only an improved form of the old one. The system is virtually raiyatwárí. Holdings are separately assessed[5] (Government rent being calculated at the value of one-fourth the average gross produce). Sarbarákárs are also employed.

Thus we have in Orissa—

Called "Peakash" Mahála.	(1) Semi-independent tributary mahála	Not under Regulation law, and pay tribute only.
	(2) Twelve (formerly thirteen) mahála of the same kind.	Under Regulation law, but permanently settled.
	(3) Ordinary village estates (temporarily settled).	Regulation law; settled now under Regulation VII of 1822.
	Khúrdá estate, formerly under No. 2...	Government estate settled with the raiyats.

[4] The first settlement was in October 1836. This lasted till 1856, when it was revised. This settlement expired in September 1880.

[5] There are two small tracts, Ángul and Bánki, which were included in the list of Scheduled Districts and exceptionally managed. But recently the mahál of Bánki has been taken off the list and now forms part of the Púrí district.

Coming now to the ordinary village settlements, those made under Regulation XII were not very successful; it was designed that short settlements should go on for 11 years, after which, on certain conditions being fulfilled, a permanent settlement would be granted. These terms were held not to have been fulfilled, and six more short settlements followed. In 1817 a special enquiry was ordered. Meanwhile certain other provinces in the North-West had been acquired, and the Regulation VII of 1822 was passed both for the settlement of these and of the Orissa provinces. It was not, however, till 1838 that a regular settlement was made under Regulation VII.

The work was rendered difficult by the immense number of revenue-free holdings that had to be enquired into. But the settlement when completed worked well, and when its term was about to expire (in 1867), it was thought desirable to continue it for 30 years more; Bengal Act X of 1867 was passed to give effect to this purpose.

The Regulation VII of 1822 still governs all ordinary non-permanent settlements in Bengal, and has formed the basis of the Land Revenue Acts in Northern India and the Central Provinces. The history of this Regulation, as remedying the defects of the permanent settlement, has been sufficiently indicated in the introductory sketch, Chapter IV of Book I. The principles and practice now prescribed were so superior to anything that had been previously devised, that Regulation IX of 1825 soon followed, extending the same procedure to the other districts not yet provided with any special settlement law.

Section III.—Procedure of temporary settlement.

§ 1.—*Regulation VII of 1822; its salient features.*

The settlements that are now made for terms of years only, may then be grouped in two classes:—

(*a*) Settlements of particular estates and lands in districts otherwise permanently settled.

(b) Settlements in districts which never came under permanent settlement (e.g., the districts of Katák, Púrí, and Bálásúr).

These settlements are under the Regulation VII of 1822 and amending laws of later date. This Regulation was originally passed for the settlement of the Katák Province, but was in 1825 (by Regulation IX) made of general application. Bengal Act VIII of 1879 has also defined the powers of Settlement Officers as regards settling the rents of occupancy-raiyats.

The distinguishing features of this Regulation are that it requires an enquiry at settlement into all classes of rights, and gives "public faith" to the record of rights so prepared, till such record is proved to be wrong, in a regular suit. It also bases the assessment on an enquiry into the real value of the land and its produce, and does not leave it to be a mere question of what was entered in the old native accounts, or what practically had been collected in former years. At first, for the purposes of this assessment, an enquiry into the produce of the land was directed, the revenue being calculated at a certain fixed fraction of the net produce valued in money; but this was found to be troublesome and to lead to no good results. Regulation IX of 1833, accordingly, altered the original system in this respect, and also introduced other improvements in the official machinery of settlement[6].

The rules require small settlements, *i.e.*, of lands not exceeding 2,000 acres, to be made by the district revenue officials. For larger settlements a special staff is allowed[7].

§ 2.—*Ascertainment of the lands and survey.*

Regulation VII does not expressly direct a survey and demarcation of the land under settlement, though it gives power to measure the land. But it is almost evident, that no record of rights,

[6] The change effected by Regulation IX of 1833 as to the method of assessment will be found more fully described in the chapter on North-Western settlements.

[7] Bengal Settlement Manual, 1879, section 5.

such as the Regulation contemplates, could be made without a survey; accordingly all settlements have been preceded by a survey, whether in Bengal or in the North-West Provinces.

The first step is, in cases where the estate to be settled is a small group of lands surrounded by others, to identify the precise place; and in any case to get the persons interested to point out the boundaries, for which purpose legal powers of summoning the landholders and others, and examining them, are given to the Collector by law. Boundary disputes are decided on the ground of possession, or are referred to arbitration, just as described more fully in the chapter on North Indian settlements[8].

There are also definite rules for measurement by standard chains or by poles if necessary. The standard Bengal bíghá is 14,400 square feet[9].

Where a large settlement is in hand and a more regular survey is required, then proceedings should be taken under the Bengal Survey Act (V of 1875).

In ordinary surveys, the amín or native surveyor prepares a chitta (khasra), or list of lands, to serve as an index to the map; abstracts showing the holdings of each raiyat grouped together are afterwards made out (this is the khatián or khatiyáni); also a general abstract or tírij (called sadhárán khatián) showing in a convenient form all the particulars of the land arranged together. There are rules for the survey, the method of checking it, the pay of the amíns and other particulars, which are given in detail in the Settlement Manual of 1879.

At the same time the amín prepares an "ekwál jamabandí" or roll showing the rents payable by the raiyats, which is of use in

[8] When dealing with an estate liable to be settled, which is surrounded by other estates not so liable, it may become a question which is the exact boundary of the estate to be settled, and whether such and such land is included in it or not. There are special rules laid down in the Board's Circulars for dealing with these cases. See Settlement Manual, 1879, sections IX, X.

[9] And the bíghá is divided into 20 cottas (kattha), the biswa of other parts; the cotta into 20 gandas (the biswánsi of other parts); the ganda into 4 kauris. The kauri is 9 square feet.

the assessment. He also furnishes a report, called a "ruídád," of the land, showing what is culturable and what excluded, what is rent-free, and so forth—in fact a general description of the estate.

§ 3.—*Form of assessment in Bengal.*

The assessment, as described in the Bengal Manual, strikes a reader accustomed to the settlements of Upper India, as somewhat strange. In such a settlement, there is always a proprietary body or an individual to be settled with; and the assessment consists in ascertaining what are the proprietors' "assets" (whether the true rental of his estate, or value of its net produce, as the case may be), and calculating 50 per cent. on the *average* (*i.e.*, not on the assets of any one year, which may be very good or very bad). This fraction is the Government revenue. Here the assessment stops. If the Settlement Officer goes further and settles the dues of under-proprietors, either by record or sub-settlement, or if he puts down the rents which occupancy or other privileged tenants are to pay to the proprietor, that is more properly part of the work of securing rights than of assessment.

In Bengal, however, a large proportion of the estates which come up for settlement for a term, are the property of Government to begin with.

Strictly speaking, therefore, Government being proprietor, the *revenue* is merged in the *rent* which it takes directly from the people on the land who were either sub-proprietors or tenants under it. And the "assessment" spoken of in the Manual, is the determination of the *rent* each of these classes has to pay to Government as its landlord. And even where the case of a temporarily settled estate, which *has* a proprietor other than Government, is described[10], the Settlement Manual does not speak of the Government taking any fraction or percentage of the "proprietor's" rental or assets; it still speaks, as before, of ascertaining the raiyat's rents and the under-proprietor's rents, and regards the proprietor's balance or

[10] Settlement Manual, 1879, section IX, § 4.

profit as a certain *deduction* from the total rental to be allowed to the proprietor.

This is, however, only a 'way of putting it:'—the Settlement Officer really proceeds much as he does in the North-Western Provinces. He first of all ascertains the proper rent, which every raiyat should pay on each acre of his holding that is not expressly rent-free[1]. It is not enough to take as conclusive the rents which have been paid, or the rents which neighbouring raiyats assert they are paying; the Settlement Officer must ascertain and estimate a *true* rental, which will hold good on the average, and not for any particular year, after eliminating[2] all disturbing causes, concealed or under-stated rents, and so forth.

There may be cases in which cash rents are not usual, so that the produce will have to be calculated and valued for the purposes of assessment. There may be cases even where a cash revenue cannot be collected; the Government may have to collect rents payable by the *raiyat* in grain. However this may be, all particulars must be put down, so as to leave no room for dispute[3].

The rules according to which rents are liable to be raised, and what rents are paid when there is a tenure-holder (not being a zamíndár) over the raiyat, are all to be found in the Settlement Officer's Powers Act (Bengal), VIII of 1879.

When the true rents on different classes of soil are ascertained, the acreage rates are deduced, and these rates, together with the classification of soil adopted, have to be reported for sanction[4].

[1] See the Settlement Officer's Powers Act (VIII of 1879, Bengal).

[2] Some raiyats of course have fixed rents, which are known and cannot be altered. Some raiyats also employ labourers under them called "karfa" raiyats; the terms on which these work are matter of contract; the Settlement Officer has nothing to do with it.

[3] Settlement Manual, section V, § 14.

[4] The process of ascertaining the rents and reporting them, is fully described in the chapter which describes the North-Western Provinces, where this system has received a full development. I do not therefore here go into particulars. In Bengal settlements are sanctioned by the Collector, the Commissioner, or the Board respectively, according to their magnitude. (Manual, section V, 10.)

The assessment is afterwards determined by applying the rates to the total acreage of the estate.

In the Chutiyá Nágpur districts, and exceptionally in other parts, the Government does not take a cash rent from each separate raiyat, but agrees with some fitting person or under-tenure-holder, or a well-to-do raiyat among the others, to be responsible for the whole revenue, and then allows him a deduction for his risk and trouble.

§ 4.—*Under-proprietors.*

In the same way as the rent of each raiyat has to be fixed, so also the "rents" (for so they are still called) of under-proprietors on the estate, have to be determined.

It has always to be considered whether in fact the existing under-tenures hold good. For example, if the Government have acquired the estate by buying it at a sale for arrears of revenue, then by the Sale Law the under-tenures may be voidable; and it has to be considered whether it is wise and equitable to exercise the power. On the other hand, if Government have acquired the estate as an escheat, then it is bound by all the tenures that the deceased proprietor was bound by.

Care has also to be taken to discriminate tenures that are called sub-proprietary, but ought really to be considered mere tenancies at favourable rents.

What the under-proprietor has to pay, is détermined very easily. For he is, in fact, an intermediary between the proprietor and the cultivator, who has the right of intercepting for himself a portion of the gross rental. The total of the rents payable by all the raiyats of the sub-proprietor, are accordingly calculated, and the sub-proprietor who receives them has to account for the total to Government or the proprietor—less a certain sum which represents his own share which varies according to the nature of his tenure.

This deduction is always to be *at least* 10 per cent. on the gross rental. But in every case the circumstances of the under-tenure

have to be considered. A deduction of 20 or even 25 per cent. may be necessary. For example, the under-proprietor may have another under-proprietor below him, again, before we come to the tenants. Here he may have to allow 10 per cent. to this second recipient; hence it would be but fair that he should be allowed 25 per cent. by the Settlement Officer, since in that case 10 per cent. would go to the second under-proprietor, 15 per cent. to the first, and the remainder to the superior proprietor.

§ 5.—*With whom the Settlement is made.*

In estates not belonging to Government, whether resumed taufír, to which a title has been established, or a resumed lákhiráj grant, or any other form of estate in which a proprietor is recognised, the Settlement Officer concludes the engagement with the actual proprietor [5].

In Government estates the rule is to manage the estate direct, the cultivators paying rents to the Government manager or farmer. Exceptionally, a settlement may be made with certain influential under-tenure-holders, village headmen, or leading men among the raiyats, or, rarely, a proprietor has been found by allowing some one to purchase the right.

Very small estates, the jama' of which is less than one rupee annually, are not settled for; they are sold revenue-free.

When the estate is Government property and settled with one or other of the persons above enumerated, the settlement is made so that he should retain 20 per cent. out of the assessed rents for his risk and trouble in collecting. This percentage is allowed both in settlements with a farmer, or in the rarer cases of settlements with under-tenants or head raiyats.

Proprietors who do not consent to the settlement, and who are therefore set aside, their estates being settled with some one else,

[5] Settlement Manual, section X, and Board's Rules, Vol. I, Chap. III.

or farmed, or held "khás," are allowed a sum of 10 per cent. on the revenue under the title of málikána[6].

§ 6.—*Term of Settlement.*

No settlement is now made in perpetuity, unless, of course, there is some statutory right in the matter, as in the case of resumed revenue-free lands in permanently settled estates[7]. It is not laid down generally, that 30 years or any other term of settlement is to be fixed, but all temporary settlements of estates the cultivation in which is fully developed (so that the term may conveniently be a long one) are directed to be so termed that they may fall in in successive years in the different divisions, and so enable survey and settlement establishments to be transferred from one to the other.

Thus, Orissa settlements will expire in 1897, Chittagong in 1898, Bardwán in 1900, and so on. This does not apply to estates not fully developed; nor to new alluvial lands; here, from the nature of the land, the terms must be shorter and dependent on circumstances[8].

[6] *i. e.*, a payment in consideration of their proprietary character. Málikána allowance often appears also as paid by private persons; for instance, a zamíndár will pay a "málikána" to some former dispossessed proprietor. In Bihár málikána was very commonly paid to village owners whose whole rents (all but 10 per cent.) the Revenue officer or ámil carried off. This will be alluded to further on. It came to an end when the permanent settlement was introduced, and was made with the actual proprietors. However, in Bihár, a large portion of the land was held by jágírdárs or other revenue-free grantees of the former Government, and the same custom was observed; the grantee paid málikána to the original soil proprietors. When the settlement proceedings found a number of these grants invalid or liable to be resumed and assessed, the grantee was nevertheless admitted to settlement as the proprietor; the málikána he paid was added to the assessment, and paid to the present day to the original owners through the Government officers. (Macneile's Memorandum, page 98; and Settlement Manual, Appendix B.) A note on this subject by Mr. Shore will be found at pages 144-48 of the Tagore Lectures for 1875.

[7] See Settlement Manual, section XI, and order there quoted.

[8] *Id.*, section IX, § 4.

SECTION VI.—THE RECORD OF RIGHTS.

The distinguishing feature of the Regulation VII is, as I have said, that it requires all rights to be enquired into, not only those of the owner (who is often represented by Government itself), but the rights of taluqdárs, hawáládárs, patnídárs, and other "sub-proprietors" (or "under-tenants," as Bengal Act VIII of 1879 calls them), and the rights of the raiyats.

In Government estates "pattás" are always granted to the raiyats, specifying the terms on which they hold; in other estates, the raiyat has his won legal right to demand a written lease, from the superior land-owner[9]; the Settlement Officer does not issue such pattás, though he can protect the raiyat by recording the terms of the holding and giving a copy of such record[10].

In the course of the enquiry into rights, the question of the right to revenue-free holdings has to be gone into. I do not think it necessary to give details on this subject[1].

Provision in some cases for the village watch (chaukidár) and messenger (buláhir) by grants of land or money[2].

The rights and tenures ascertained in the course of this enquiry appear of course in the khatián and tírij already alluded to. I do not find any mention of a general description of village customs, rights as to pre-emption, limits on alienation, principles of succession, &c., which are embodied in the North Indian settlements in a document called the wájib-ul-'arz, or record of "facts necessary to be represented." This is due to the more or less complete extinction of the village system.

SECTION VII.—SETTLEMENT PROCEEDINGS AND REPORT.

The settlement proceedings are closed by a Settlement Report

[9] Bengal Rent Act (VIII of 1869), section 2; and so in the old Act X of 1859.
[10] Regulation VII of 1822, section I, clause 9.
[1] Settlement Manual, section VII.
[2] *Id.*, section VIII, § 2.

describing the estate, the tenures on it, the facts relating to assessment, and so forth. It is accompanied by—

(1) An abstract of the ámín's information; the extent in bíghás and acres; extent unassessed; extent of waste; former revenue and rent-rolls, &c., giving also the details as they appear from old qánúngo's records, from former measurement and from the present measurement.

(2) Particulars of rent-free lands.

(3) Occupation of lands, showing different classes of soil, rate per bíghá and per acre of each sort, the total area and the rent, with a note of additional payments under "bankar," "jalkar," "phalkar," &c.

(4) Analysis of revenue assessed; the assets assumed as basis of settlement, deductions and the net result; also the patwárí's pay and the málikána, if any, which together give the total payable by the settlement-holder.

(5) Particulars of "service-lands" held by patwárís, headmen, ghatwáls, &c.

(6) Statement of occupancy rights, showing also area of land cultivated by proprietors, by occupancy tenants, and by other tenants.

Settlements are, under the orders of Government, confirmed by the Collector, the Commissioner, the Board, or the Board with Government sanction, respectively, according to their magnitude and duration[3].

Section VIII.—Certain Districts in which the Settlement is of a special character.

This section is chiefly intended for the benefit of a forest officer who may require to know what is the position of the district with reference to settlement in case it is in contemplation to bring any portion of the forest or jungle land in it under departmental management.

[3] The rules are given *in extenso* in the Settlement Manual, section XVI, page 38.

The districts in the Chutiyá Nágpur Division are Hazáribágh, Lohárdagga, Singbhúm and Mánbhúm. A portion of all these came under the permanent settlement, because at that time the estates so settled, formed part of the Collectorates or Provinces then recognised.

§ 1.—*Mánbhúm.*

The district is for the most part permanently settled. The lands were originally divided out into villages, each under its own headman, and then a circle of villages was united into what was called a parhá, with a "mánki," or superior headman, over the whole. The parhás elected again a chief over him, and this chief was settled with and became the "zamíndár" or proprietor of his chiefship under the permanent settlement. All the waste was, according to the usual practice, recognised as included in the estates so settled. There is one large Government estate in the district, and another estate held under a long lease called an "ijára."

The rent law (Act X of 1859) is in force, but has led to some difficulty.

Lands are never sold for arrears of revenue, and all sales or mortgages of land require the sanction of the Commissioner.

§ 2.—*Singbhúm.*

Is divided into three portions. One group contains three estates or chiefships, managed as estates under political control only. The second portion (Dhálbhúm) is a permanently settled estate. The third portion (Kolhán) is a Government estate temporarily settled with the raiyats at rents fixed for the term of settlement. These raiyats are grouped in villages in the manner described above; each village has a headman or "múnda," and each group or circle of villages a superior headman or "mánki." The remarks made about the sale of lands in Mánbhúm apply to this district also.

§ 3.—*Hazáribágh.*

Here there are four principal sub-divisions according to the different settlement arrangements :—

(*a*) *Rámgarh* was originally a single estate; but it has since been split up into four separate estates, one being the land occupied by cantonments, &c., around Hazáribágh, the second being the zamíndárí of Kodarma, the third that of Rámgarh, the fourth the Kendu estate, a "taufír" or estate made up of resumed surplus lands and settled for 20 years. The Kodarma zamíndárí was confiscated in 1841, and is now under temporary settlement.

(*b*) The Khunda estate.

(*c*) The Kháratíga estates, one of which is permanently settled, others temporarily, and one is revenue-free.

(*d*) The Kendi estate, which is permanently settled.

§ 4.—*Lohárdagga.*

The Palámau sub-division is a Government estate or "khás mahál" temporarily settled. It contains some State forests reserved. The rest of the district is settled with the Mahárája of Chutiyá Nágpur as a sort of permanently settled estate, but it is looked upon rather as a tribute-paying chiefship, and has never been held liable to sale for arrears of revenue.

In Chutiyá Nágpur districts there are some curious subordinate tenures, provision for the record and declaration of which has been made in the Bengal Act II of 1869. These will be described under the chapter devoted to the subject of tenures.

§ 5.—*Sontál Parganas*[4].—*The Plains portion.*

This is, like the others, a scheduled district.

For revenue purposes, it may be grouped into two portions —the plain and the Dáman-i-Koh or hill tract. The former is all settled under the old permanent settlement, but Regulation III of

[4] The limits to which this section applies are the limits described in the schedule to Act X of 1857.

1872 (under 33 Vic., Cap. 3) guides the present procedure, and provides certain rules regarding the raiyats' tenures, so that only the right in the soil and the fixity of the revenue assessed remain from the Regulations of 1793.

The Sontál Parganas were first removed from the operation of the ordinary law by Act XXXVII of 1855[5], which provided for a special superintendence. And this Act has been continued and amplified by the Regulation III of 1872 which declares the laws in force. It is important to remember that Act XXXVII declares that no Act of the Legislature, either past *or future*, shall apply to the Sontál Parganas unless they are expressly named in the Act. This is why the Forest Act of 1878 does not apply, nor has it yet been extended under the Regulation of 1872. The old Forest Act of 1865 was specially extended, and consequently still remains in force.

Part of the plain or old settled tract is regularly cultivated, but part of it is hilly, and still much covered with jungle. This portion is largely peopled and cultivated by Sontál immigrants. These brought their village institutions with them, and settled, each village paying rent to the zamíndár landlord. Practically, all the village tenures are permanent and alienable—subject only to the superior landlord's rent. As a rule, the landlord gets his rent, not direct from the raiyats, but through a village headman; so that in fact the zamíndár is really more like a pensioner drawing a rent from the land, but not, as a rule (for there are some lands under his direct management), interfering in the cultivation or management of the villages.

§ 6.—*The Dáman-i-Koh.*

As early as 1780 A.D. the tract known as the Dáman-i-Koh was withdrawn as an act of State from the general settlement, and was made a separate "Government estate[6]." This, however, prac-

[5] The schedule to this Act has been repealed by the revised schedule in Act X of 1857.

[6] I am indebted for this information to the kindness of Mr. W. Oldham, the Deputy Commissioner, and to a Memorandum on the Sontál Settlement by Mr. C. W. Bolton, C.S.

tically meant that the Government took the tribes under its own immediate management and did not recognise any zamíndár or intermediate landlord as having any hold over this wild region.

The Sontáls are not the original inhabitants of this tract, but two or three Kolhárian tribes, now indiscriminately known as "Pahárias." The Pahárias cultivate chiefly by "júm," or shifting cultivation effected by clearing a patch on the hill-forest, cultivating it for a crop or two, and then abandoning the spot for another. At first there was no settlement, or rather the usual order of settlement was reversed; the people did not pay anything to Government, but, on the contrary, the Government paid them an annual grant to support their headmen and tribal officers. These officers seem to be the relics of the old days when the hills were nominally within the zamíndárí estates of the regular settlement. There were divisions described by the imported term "pargana." Over such a division there was a "sardár," with his "naib" or deputy; the headman over a village was the "mánjhí." The pargana division has long fallen into disuse, but the sardárs and others survive, drawing their pensions.

The Sontáls then seem to have immigrated in considerable numbers, and cultivated all the valleys and lower slopes, so that the wandering Pahárias with no settled cultivation, became confined to the hill sides; since that time, the Pahária headmen have begun to claim specific properties in the hill tops and slopes, which, however, Government does not theoretically recognise, it having all along claimed the region as a "Government estate." No interference with these people is, however, contemplated, and they have of course wofully abused and destroyed the forest. It has been long a question whether part of the forest could not be put under regular conservancy; and quite recently it has been determined to enforce simple rules in a portion of the area.

§ 7.—*The Settlement.*

The settlement arrangements of the cultivated villages of the Sontál Parganas are governed by the Regulation III of 1872, the

mánjhí or headman of each village collecting and paying in the rents to Government or to the owner, as the case may be, and being allowed 8 per cent. as his "commission." At the time I am writing, the amendment of this Regulation is under consideration consequent on a doubt which has arisen regarding its interpretation. The Regulation contemplated the record of all classes of interests in land and fixing of all rents (permanently settled estates not excepted), whether payable to a proprietor or to Government; these rents were to remain unchanged for at least seven years. It is doubted whether, on the expiry of such a settlement, the Government may make another, fixing the rents again for a new period, or whether, on the expiry of the existing term, the rents may be raised by the proprietor without reference to any such procedure.

The question will be set at rest either by an authoritative interpretation of the Regulation as it stands, or by the issue of an amending law.

§ 8.—*Jalpaigúrí.*

That part of the district which is south-west of the Tísta river is all permanently settled, having been formerly part of the Rangpúr Collectorate. The remaining part of the district, north of the Kuch Bahár (tributary) State, and extending to the borders of the Goálpára district of Assam, comprises the Bhútán (Western) Dwárs[7].

The district as a whole is called a "non-regulation" district, but the whole body of ordinary law is in force in the "regulation portion," to which the permanent settlement extended.

The Dwárs lie along the foot of the hills, and were taken from the Bhútias in 1865. In 1870 the country was settled for ten years. The Government is considered the proprietor of the soil, and the settlement is made with the soil occupants called jotdárs, whose tenures

[7] In a Notification No. 308, dated 3rd March 1881 (*Gazette of India*, March 5th 1881), the laws in force in Jalpaigúrí and Darjiling (besides Act XIV of 1874) have been declared. All the "Regulation" laws apply to the Jalpaigúrí district up to the Tísta river. The Western Dwárs are separately provided for.

are recognised as fixed tenancies, with a rent unalterable for the term of settlement. The "jot" is saleable for arrears of revenue[8].

In some of the "girds" or parganas (of which the Dwárs contain nine in all) the settlement was made with farmers without proprietary rights, who were allowed 17½ per cent. on the revenue as their remuneration and profit. When the settlement is with the jotdár, the revenue collection is made by tahsíldárs, who are remunerated by an allowance of 10 per cent. on the revenue.

§ 9.—*Darjiling.*

This district also may be described as divided into several different revenue tracts :—

(*a*)[9]
(1) In the north-west corner a large estate (115 square miles) has been granted on a perpetual rent to Chebu Láma.
(2) The old Darjiling territory ceded by Sikkim in 1835—a long strip of 138 square miles, extending down to the Tarái near Pankhabári.
(3) Two strips on each side of this acquired in 1850 bring the district up to the Nepal frontier on one side and to the Tísta river on the other.

(*b*) The Tarái below Pankhabári, also annexed in 1850.

(*c*) The Damsong sub-division, or hill portion of the Bhútia territory about Dalingkot taken in 1865 (east of the Tísta, west of the Jaldába, and north of the Western Dwárs in the Jalpáigúrí district, just alluded to).

Nearly all the territory in (*a*) (2) and (3) seems to have been dealt with under various "waste land rules" and now to consist of—

(1) Estates sold or granted or commuted into "fee-simple" or revenue-free holdings.

[8] Some further details will be found in the Chapter on Tenures.

[9] By the Notification of March 3rd 1881, the laws in force in Darjiling are specified. For this purpose the district is divided into three portions—(*a*) the hills west of the Tísta; (*b*) the Darjiling Tarái; (*c*) the Damsong sub-division (east of the Tísta).

(2) Estates "leased," *i.e.*, granted to persons who are proprietors, but have to pay revenue according to their lease.

(3) Government estates appropriated to forests, to station sites, military purposes, &c., and waste not yet disposed of.

In the tract (*b*) there were some lands at first settled for short terms (three years) with Bengalís, the settlement-holders being called chaudhris of "jots" or groups of cultivation. The chaudhris were, however, abolished in 1864 and the settlement was made with the jotdárs.

In the upper Tarái are also settlements for short terms made with Mech and Dhimal caste-men, who pay a certain rate on each "dáo" or hoe used for cultivating. Some jungle-clearing leases for five years were also given. In 1867 there was a survey and settlement under the modern procedure for thirty years.

In the Damsong sub-division (*c*) at first only a capitation tax was collected; the tract will probably ultimately be surveyed and brought under temporary settlement.

§ 10.—*Hill Tracts of Chittagong.*

This tract is not really under any settlement at all, though it is British territory (the hills beyond this again being independent). As there are forests in it, it may be well to allude to it.

Under the old Forest Law of 1865, some 3,760 square miles (out of the district which contains 6,882 square miles) were declared on 2nd February 1871 to be "Government forest;" a portion of this only was ultimately declared "reserved," and will remain so under the present law.

Originally the district was not separate from the Regulation district of Chittagong, but the local chiefs in the jungle-clad hills were left almost uninterfered with, the time of the Collector being fully taken up with the more intricate management of the estates in the plains.

The chiefs paid a tribute in the form of so many maunds of cotton in kind, calculated on the population, which was afterwards

converted into a money payment. This revenue was consequently shown in the old accounts as derived from the "kapás mahál."

By Act XXII of 1860[10] the district (as defined in a schedule to the Act) was removed from the operation of the General Regulations and put under a Deputy Commissioner. Simple rules regarding judicial procedure have been drawn up under the Act, and no revenue settlement has been made. But there is a capitation tax payable by householders to the chiefs, and the latter pay a "tribute" or quit-rent (or whatever it is proper to call it) which has become fixed by custom.

The cultivation is still chiefly of the temporary kind called júm, so natural to all semi-barbarous people in tropical hill countries, and an attempt has been lately made to record in a simple way (so as to gradually get them fixed) the rights and interests of the different clans or tribes and their chiefs and headmen. The record is called the "júm book."

There are a certain number of estates in which lands are permanently cultivated, and these may be under a settlement under the ordinary law. A portion of the district[1] called the "khás mahál" is reserved from the jurisdiction of the chiefs, for the purpose of making land grants to settlers.

[10] This Act will be repealed when the Scheduled Districts Act (XIV of 1874) is applied to Hill Chittagong.

[1] Statistical Account of Bengal, Vol. VI.

CHAPTER III.

THE LAND TENURES.

§ 1.—*Classification of Tenures.*

LAND tenures in Bengal may be broadly classified for the purposes of our study into—(1) those which are found in the districts where the occupation and cultivation of the whole country is of ancient date, and where the villages have been long under some form of regular revenue management; and (2) those in the hilly or jungle-covered and less civilised districts, where the circumstances of life are different.

The superior tenures of the first class will be most commonly found to have originated either in some official rank or position of the tenure-holder, or in some grant by the State: the tenures subordinate to the higher ones will be chiefly derived from a lease or grant made by the upper tenure-holder, or, in some cases, by the State. Here and there will be a term indicating some ancient customary holding, but the majority of the tenures now indicate by their nomenclature, that the village system has fallen into decay. Where the original hereditary possessor of the land has survived under the State grantee or official who is now recognised as the "proprietor," it is either as the "hereditary cultivator" of modern tenant law, or as the "istimrárdár" or "muqarraridár," "dependent táluqdár" (or some such other term), derived from the Mughal system.

In the other class of tenures, the names still indicate in most cases—not, however, without an intermixture of terms relating to more modern leases, farms and grants—the original tenures of the soil. Here we shall find the grouping of lands into "jots," or "tarafs," or "villages," the tenures being of those who have cleared

the waste, whether as proprietary founders or as helpmates to them; we shall find certain tenures also held, in virtue of office (but hereditary in the family), by the village headman, the priest, the genealogist, and so forth. In border estates, we are pretty sure to find tenures which originated in grants made by the Chief for service in keeping hill passes and roads open, and for protecting the plains from the incursions of hill-robbers.

Looking again to the geographical distribution of these tenures, we shall find the first class, chiefly in Bengal and Bihár, in the Regulation and long-settled districts in which the Mughal system was fully developed. The second class will appear in the greatest variety in Sontália and in Chutiyá Nágpur, in the Dwárs, and in Chittagong.

§ 2.—*Tenures of long-settled districts.—The zamíndárí.*

In the first class of tenures, the landed proprietor called "zamíndár," occupies the prominent position. With this title the reader will by this time be familiar, and but little further description will be necessary. There has been a tendency, natural enough, to apply this term to any superior or "actual" proprietor of land, whether he derived his right from the revenue agency of the Mughal Government (which is properly designated by the term) or not.

It is stated that, in Hindu times, the responsibility for the revenue of a tract of country, coupled with other duties, such as the maintenance of order and the suppression of crime, was vested in officials called "chaudhari." The Mughal Government[1] adopted the system, calling the chaudhari "karorí," *i.e.*, a person collecting the revenue of a tract (called a "chakla") yielding a "*crore*" of "dams," or 2½ lakhs of rupees. Afterwards the karorí became the zamíndár. But not only the karorís, but the Hindu Rájas, whom the Muhammadan conquerors found in possession of their ancestral domains, were constantly made zamíndárs of their own territories on agreeing to pay a certain revenue. Hill Chiefs

[1] Tagore Lectures, 1875, pages 61-68.

also became zamíndárs of their 'estates;' very often they were mere robber-chiefs, as in the Northern Circars of Madras[2]. Revenue officials of all grades, and even wealthy men not in any official position, but who farmed the revenues, or acquired local influence, also got made, or recognised as, zamíndárs.

The fact that in many cases the zamíndár had local possessions and a real hereditary connection with the land, had, of course, its influence in bringing about the recognition or grant of a *proprietary status* to the zamíndár when the Regulation law was introduced.

I have no need to repeat, that no one has ever supposed the zamíndár, as such, to have originally been anything like an English landlord. The zamíndárí was theoretically an office or place under Government. The office, indeed, became in practice hereditary (as offices under native rule always tend to become); but the heir had always, or at first always, to seek his appointment exactly as if he were a new-comer, and pay a handsome "peshkash," or fee. The documents instituting a zamíndár were formal and indispensable; it was only in later times, when a great variety of persons had become zamíndárs—among whom were chiefs and others who from the first were more than mere officials,—and when the custom of the post being hereditary was quite established, that the patents or grants fell into disuse. And then, too, the strict responsibility was relaxed. At first the zamíndár had to account to Government for all the revenue that was assessed on the raiyats and collected by him: his own share was a fixed allowance, at first in money, afterwards in rent-free land. But, in time, the practice

[2] "Native leaders, sometimes leading men of Hindu class who have risen to power as guerilla plunderers, levying black-mail, and eventually coming to terms with the Government, have established themselves, under the titles of zamíndár, polygar, &c., in the control of tracts of country for which they pay a revenue or tribute, uncertain under a weak power, but which becomes a regular land revenue when a strong power is established. This is a very common origin of many of the most considerable modern families, both in the north and in the south. To our ideas, there is a wide gulf between a robber and a landlord, but not so in a native's view. It is wonderful how much in times such as those of the last century, the robber, the Rája, and the zamíndár run into one another."—*(Campbell's Land Tenures in India: Cobden Club Papers, 1876, page 142.)*

arose of allowing the zamíndár to contract or bargain to pay in a certain sum, and then he began to treat the raiyats as *his tenants*, and took from them what he could get so as to make his own profit on the bargain. This led to his position under the Regulations, and to the gradual establishment of the notion that he could raise the rent of his raiyats.

§ 3.—*Form of his appointment.*

The original or regular process of appointment of an official zamíndár is curious and interesting, and may here be briefly described. On the decease of a zamíndár, his intending successor reported the fact; then he got a reply of condolence, which opened the way for further action. Next he presented an "'arzí" stating he was ready to undertake the duty of zamíndár and would offer such and such a fee. On this petition the local officials endorsed a "fard sawál," asking the superior authority for orders as to what was to be done. If the reply was favourable, the officials then supplied a further "fard haqíqat," or statement of the particulars of the estate, the number of villages, or other groups of land in the estate,—compact with it, or detached and scattered in other places,—the revenue payable (both mál and sáir), and so forth; then the intending zamíndár furnished a "muchalka," or bond for good conduct and fidelity; and lastly, received from the Government the "parwána" or "sanad" granting the post.

§ 4.—*Position of the zamíndár as ascertained in 1787.*

When, preparatory to the decennial settlement, the original enquiry was being made regarding the real status of the zamíndárs, Mr. Grant, "the Chief Sarishtadár[1]," or head of the Revenue Record Office, reported (March 1787) that the "local privileges" of the zamíndár were—

(1) he was the perpetual farmer of the Government revenues, allowed to appropriate the difference between the sum

[1] These papers have been reprinted by the Board of Revenue in a collection called "Papers relating to the Permanent Settlement."

fixed in the sanad and what he would lawfully take from the raiyats;

(2) he was the channel of all disbursements in the district, connected with the revenue administration, charities, &c.;

(3) he could improve the waste land within the limits of the zamíndárí, to his own personal advantage;

(4) he could grant leases of untenanted villages or farms (these, of course, he could make more or less favourable, at his pleasure); and

(5) he could distribute the burden of the abwáb, or additional cesses imposed by authority; (those which he levied on his own account were, of course, by a stretch of authority).

Some other matters of less importance were also noted; and one of the zamíndár's privileges was said to be, adoption or nomination of a successor with the approval of the Government. Originally, as I have said, the zamíndár was made to account for all the revenue he received, and only deduct for himself a fixed allowance, and a further deduction for office expenses, charity, &c. And even at the later date, when Mr. Grant says he had everything that he could get over and above the fixed sum he was bound to render to Government, it must be remembered that the assessment of the land was perfectly well known by custom, and that increase depended, therefore, either on arbitrary measures, such as levy of cesses, or on extending cultivation to land that had hitherto been waste.

§ 5.—*Further growth.*

After a time it became the custom to assign to the zamíndár certain lands called nánkár, free of revenue, for his own subsistence, instead of, or in addition to, his cash allowance. Of these lands he soon became direct owner. Then he had his "sír" or "nij-jot" land—his own ancestral holding (as an individual); also, lastly, the waste land cultivated by aid of his own lessees or contract labourers, became his, under the title of "khámár" land. When to this is added the fact that he could acquire lands by sale, mortgage, by

ousting obnoxious men, and by taking possession when an unfortunate owner absconded—perhaps to avoid exactions which had become intolerable, perhaps in his inability to pay his "rent"—it is not difficult to perceive how the zamíndár grew into his ultimate position. When this virtual ownership had gone on for several generations, and had become consolidated, the fact of a formerly different *status* very naturally became little more than a shadowy memory. Our early legislators of 1793 could then hardly avoid calling the zamíndár's right a proprietary one, and treating it accordingly; though, as I have already shown, they limited, or intended to limit, the right thus conferred, so as to secure at least so much as the original right of the now suppressed village landowners, as could still be established[4].

§ 6.—*Power of transfer of landed property.*

In one respect, however, the recognition accorded to the zamíndár's right in 1793 was a material advance beyond what practice had hitherto sanctioned. Powerful as the zamíndár became in managing the land, in grasping and in ousting, he had no power of alienating his estate; he could not raise money on it by mortgage, nor sell the whole or any part of it. This clearly appears from a proclamation issued on 1st August 1786; the illegal practice "of alienating revenue lands" is complained of; the "gentlemen appointed to superintend" the various districts are invited zealously to prevent the "commission of this offence;" and the zamíndár, chaudhari, taluqdár, or other landholder who disobeys, is threatened with "dispossession from his lands[5]."

[4] In some cases where there were no zamíndárs, properly so called, the settlement created them. Thus, in the districts of Orissa (Katák, Bálásúr, and Púrí) the villages had been held *direct* by the Maráthás (according to the usual system of this Power, as we shall see when we come to the tenures of Central India) or by the Chiefs. The estates of the Chiefs were recognised to the extent legalised by the Regulation XII of 1805, but for the other villages, headmen and others in prominent positions were often selected and made the zamíndárs. (See Statistical Account of Bengal, Vol. XIX, page 106.)

[5] This proclamation will be found reprinted in Appendix F, page 179, of Mr. Cotton's "Revenue History of Chittagong."

Such a limitation was inconsistent (as I have explained in the General Introductory sketch) with that proprietary interest which it was thought necessary to secure to the landholder in order to enable him punctually to discharge his revenue obligations; hence among the earliest Regulations will be found a provision which declares the zamíndár's proprietary estate, to be heritable and freely transferable.

The zamíndárí estates in Bengal were usually large, though, as I have explained, many of them got broken up soon after the settlement of 1793, owing to the rigid enforcement of the revenue payments. In the districts which formed the Bihár province (with a Hindústání population) the zamíndárís, however, were nearly all small. Only a few Hindu Rájas had retained zamíndárís on a scale resembling those of Bengal[6].

§ 7.—*Jágír grants.*

Besides the zamíndárs, another class of proprietary tenures arose from royal grant. The jágír was an assignment of the revenues of a tract of country to a court favourite, a general, or a chief, either to maintain a fixed military force in aid of the royal power, or because the tract was lawless, and could neither be governed nor the revenue collected, without a military force. Jágírs were rare in Bengal[7], but more common in Bihár.

§ 8.—*Taluq grants.*

Another royal grant was the "taluqdárí." No mention of service was entered, and a fixed quit-rent or tribute had usually to be paid. The taluq was a royal grant of villages outside and inde-

[6] Indeed, the zamíndárís there were much more analogous to, if they were not identical with, the original proprietary holdings, as distinguished from estates which were merely constituted on the principle of their being convenient revenue-tracts. There is a note of Mr. Shore's (Lord Teignmouth) on this subject, which will be found at pp. 144-48 of the Tagore Lectures of 1875.

[7] Mr. Grant (in 1787) says he only knew of three or four, and they were life-grants at least in form.

pendent of, any zamíndárí. In this case, our Government recognised the independent taluqdár as "proprietor" of his own estate, just as it did the jágírdár or the zamíndár.

But there was also a class of taluq called "dependent" to which it was not so easy to assign a correct position. In the first place, some of them owed their origin to royal grants, and it was a question of fact whether it was intended to create a separate estate, or a mere favourable sub-tenure under the zamíndár. In some cases it was found that the taluq dated prior to the zamíndárí, and then the settlement naturally recognised it as independent[8]. Also the zamíndárs themselves often granted "dependent taluq" holdings inside their estates—probably to some of the more powerful of the original landowners, or to some prominent man who undertook the management, at a fixed rental, of a troublesome, or waste, or impoverished, portion of the estate. The term "taluqdár" is essentially indefinite, and was probably meant to be so; and the "sanad" or grant was different in form from that of the jágírdár or zamíndár. When we come to speak of Oudh tenures, we shall see what important results this very indefiniteness had in the growth of the great "taluqdárí" estates of that province.

Mr. Grant says that, originally, independent "taluqdárs" only existed by royal grant in Bengal, near Múrshídábád and Húglí, and that they were rich and favoured persons, who, desiring to be free from the interference of revenue agents and zamíndárs, obtained grants of territory on promising to pay a fixed sum, subject to no future increase. A fee was often paid as consideration for the grant. The taluq was always considered transferable[9].

[8] Regulation VIII of 1793 (Bengal Code, Vol. I, p. 20, note) laid down several principles for ascertaining whether the taluq was to be "mazqúri" (dependent) or independent.

[9] In the 24-Pergunnahs, I find it noticed that the zamíndárí estates had been much broken up, and the portions separated and sold for debt or arrears, or gifted away. When the settlement came on, all estates that paid Rs. 5,000 revenue were called "zamíndárís," and all paying less were called "taluqs."—(*Statistical Account of Bengal*, Vol. I, page 262.)

§ 8.—*Question of soil ownership in the case of Royal grants.*

In all these tenures, so far considered, it will be obvious that originally the grantee was not, or need not be, the owner of the soil. In any estate he might possess certain ancestral lands; but as regards the whôle, he was merely granted the privilege of realising the Government share of the produce, or the Government money demand, from the already existing villages and groups of landholders, and retaining part of it for his own benefit. On the other hand, a grant might contain a good deal of waste land which would become the property of the grantee; or it might include lands already his own, and then the grant amounted only to a remission of the whole or a portion of the revenue demand. Exactly the same causes which enabled the zamíndár to become owner of the land, also operated to give a colour of proprietary right, over the whole estate, to the tenure of the jágírdár or taluqdár. The ancestral holding was the nucleus; the power of arranging for the clearing of the waste soon increased this; and then came the effects of sale or mortgage by a tenant who could not pay, the ouster by violence, or the absconding of an insolvent, and the consequent location of a new cultivator; thus the "proprietary right" grew from field to field and village to village, till, in the course of time, it was held to embrace the whole. I do not wish to convey the impression that every jágírdár or assignee of Government revenue, was granted the proprietary right in the soil, but only to show how easily such a grantee could improve his position till he became the virtual proprietor. And the fact that such grants might only affect the revenue, and not the land, is clear from Regulation XXXVII of 1793, section 4, which says that these grants do not (*i. e.*, do not necessarily) touch the "zamíndárí" or proprietary right in the estate: a man, for example, might be legally *proprietor* of a plot, though his sanad to hold it revenue-free as a jágír might be invalid.

§ 9.—*Petty grants.*

Besides these grants, which constituted the basis of the great

estate tenures, the Mughal Government made numerous smaller grants, which usually were given for charity, for religious uses, or in reward for some service: these were variously called "inám," "aímá," "madadma'ásh," or simply "altamghá" (literally, grant by the royal *seal* or *stamp*). They were all really proprietary grants, and usually of small extent. They were heritable and transferable[10].

§ 10.—*Subordinate tenures:—those (1) due to original position.*

Subordinate to these actual proprietary interests in land, are to be found a variety of secondary tenures to which it is not easy to assign a precise place, or to say whether they are more properly classed as subordinate proprietary rights, or tenant rights of a privileged character. There can scarcely be a doubt that the vast majority of the resident "cultivators" of Bengal who now appear as "raiyats" under the zamíndárs, would have become land-owners, or privileged tenants, at least, had the village system survived. Hence the strong desire that has been felt to secure their position, and the anxiety of some (to whose opinion I have already alluded) that the benefit of the settlement should extend to fixing the raiyat's payment to the "landlord," as well as the "landlord's" to the State.

It is hardly any wonder, then, that the more powerful or enterprising of the original owners of the soil—some perhaps being the old headmen of the villages—should have succeeded in making terms with the zamíndár, or even with the Local Governors and other authorities, and getting grants or agreements which secured to them a fixed position intermediate between that of superior proprietor and of mere cultivating tenant.

Very commonly these intermediate tenures became "mazqúrí" (or dependent) taluqs—holdings which were heritable and transferable, and for which a fixed and not enhanceable rent was to be paid to the superior.

"Muqarrarí" and "istimrárí" tenures are of the same kind;

[10] See Regulation XXXVII of 1793, section 15, 1st clause. All these resemble what are called "mu'áfí" in Upper India.

their names have reference to the *perpetual* (istimrárí) duration of the tenure, and to the *fixity* (muqarrarí) of the rent to be paid.[1] A "gánthí" is also a heritable and perpetual tenancy of this kind, the rent being fixed.

§ 11.—*Those (2) due to engagements for clearing waste or improving estates partly waste.*

A number of under-tenures also arise in connection with contracts made by a landlord to clear and cultivate some waste portion of the estate[2]. Here it would be necessary, according to the more remote position of the waste and the difficulty of reclaiming it, to hold out strong inducements to some persons to take jangalbúrí (clearing) leases and ijárá (corruptly "izárá"), long leases on light terms. The hawálá of Eastern Bengal is a tenure of a similar kind. The student will here remember how strong is the feeling of rights among the natives of India, derived from the fact that the occupant is the man who actually cleared the land;—even though such a pioneer should be confessedly only grantee of a superior proprietor.

§ 12.—*Those (3) due to arrangements for collecting rents.*

But a large class of under-tenures has been created by the landlord, on the principle which induced the Government in the first instance to appoint the zamíndár himself.

[1] The tenure might be istimrárí alone, *i.e.*, perpetual as in time, but liable to re-assessment of rent, or (and more commonly) it was both istimrárí and muqarrarí. "A muqarrarí-istimrárí is a subordinate transferable and hereditary tenure of the first degree intermediate between the zamíndár and the cultivator. The holder occupies the same position towards the zamíndár or other superior as the zamíndár does to the State. These tenures are liable to sale in execution of a decree for arrears of rent, and purchasers acquire them free from all incumbrances created by the outgoing holder (with certain exceptions in favour of cultivating tenants). They have their origin in the needs of the landlord who wishes to raise money, or in a desire to make provision for relatives or old servants, or for the settlement of a dispute with a large under-tenant. * * * * The larger kinds of muqarrarí-istimrárí existing from before the permanent settlement are called taluqs."—(*Statistical Account*, Vol. XIV, pages 139-40.)

[2] All these under-tenures have many varieties. In Tipperah I find mention of about sixty kinds of taluqs, called "mushakhsi, takhsísí, ágat, muqafát, chauhaddí, bandobasti, and so forth; so also with hawálás; they are mirás (hereditary) qáimi, karárí (conditional), &c., &c.

It was especially after the permanent settlement, that the most numerous class of sub-tenures of this kind, called "patni[3]," sprang up. Just as the Government had given up all claim to vary its demand with the capability of the land, and took a fixed revenue, leaving the surplus profits to the land-owner, so, many zamíndárs became content in their turn to abandon direct connection with their lands, and to create sub-tenures in favour of persons who undertook to make them fixed rental payments. The zamíndár usually took a fee or lump sum down, on granting the patni, thus discounting the increase which future years might otherwise have brought him in. These "patnis" were created in such numbers, that as early as 1819 a special Regulation on the subject was passed. The preamble to the Regulation VIII of that year, informs us that these sub-tenures originated on the estate of the Rája of Bardwán. The Regulation declared their validity, and enabled the landlord to recover his rent from the patnídár almost with same powers as Government possessed in recovering against the zamíndár himself. This Regulation is still in force[4], and the patni tenures are now extremely common in all the permanently settled districts.

"The process of sub-infeudation," says Mr. Macneile, "has not terminated with patnídárs or ijárádárs: dar-patnis and dar-ijárás (*i.e.*, a 'patni' of a 'patni'), and even further subordinate tenures, have been created in great numbers. These tenures and under-tenures often comprise defined tracts of land; but the more common practice has been to sub-let certain aliquot shares of the whole superior tenure, the consequence of which is that the tenants in any particular village of an estate now very usually pay their rents to two, or many more than two, different masters, so many annas in the rupee to each[5].

[3] Or "patni taluq," more properly "pattaní." The holder is called patnídár. See Macneile's Memorandum, page 15.

[4] In connection with Bengal Act VIII of 1865.

[5] Macneile's Memorandum, § 12. This has led to a great difficulty, on which subject a further chapter will be found in the Memorandum (Fractional payments of rent—Chapter XVII). In the Ambála division of the Panjab, we see something of the

In most cases, then, the sub-tenures of the present day (which do not represent a virtual recognition of some older right) resolve themselves into a right to collect, or rather to receive, rent. The land-owner, not wishing for trouble, grants a permanent *patni*, or if he is doubtful of his lessee, takes security and gives what is called a zar-i-peshgi lease[6]. The sub-tenure-holder then collects the rents. When he ceases to care about doing so, he, in his turn, bargains with another to make good something less than the amount he has been able to realise. Each deduction, in fact, represents the price of the grantor's immunity from the risk and trouble of collecting the rents, and consequently the profit to be enjoyed (enhanced by such extras as he can get) by the sub-tenure-holder.

In the above description, the reader will have noticed the total absence of anything indicating a survival of an indigenous or customary system of holding land. The great tenure-holders are zamíndárs, taluqdárs, or jágírdárs—all terms derived from the Muhammadan revenue or administrative organisation; the sub-tenures are nearly all expressed in terms often derived from the Arabic and Persian, and indicate rather the artificial nature of the tenancy,—its perpetuity, the fixity of its obligatory payments, its object, or its extent,—than anything else. And these tenures prevail over the whole of Bengal proper, wherever the permanent settlement extended. Here the village organisation, never of the more powerful joint-type which has survived so many vicissitudes in Northern India, gave way before the Revenue system of the Mughal conquerors, and landed rights soon came to be expressed in terms

same kind:—old Sikh jágírs now held by a multitude of sharers. Here the proprietors of the soil would be harassed if they had to pay a separate fraction to each sharer. The settlement, therefore, compelled the sharers to appoint a representative (called "Sirkarda") who receives the jágírdár's portion in the lump and distributes it.

[6] Zar-i-peshgi,—literally "money in advance." The lease is either a grant of the right of collecting the rents of a certain area, with an advance paid down as security (*Statistical Account*, Vols. XI-XII), or a lease to repay by the collection of rent, debts already incurred by the proprietor, or a loan which he takes on granting the lease. Such leases are also called "súd-bharna" or "sadhua patawa."

of the new system. There is scarcely, therefore, any opportunity, save perhaps in the eastern districts covered with jungle, for the survival of ancient or peculiar methods of land-holding, and the preservation of old localised and characteristic terms.

§ 13.—*Small proprietorships in Bihár.*

But in the Bihár districts the village system had not completely disappeared; and here we find, besides the tenures above described, some which indicate a certain survival of an earlier economy. The chief survival, that of the village officers, will be noticed under the head of "Revenue Officials." I have already made some remarks on the small size of the estates in Bihár. The fact is that in some of these districts, for the first time, we find the original owner in possession, and his position confirmed. "The petty landlords of the districts, who generally belonged to the Bábhan or military Brahman caste, were probably the descendants of those who, before the Muhammadan conquest, held these lands by military tenure from the Hindu kings[7]."

The ámils or Government revenue collectors did not, as a rule, succeed in ousting them and becoming zamíndárs in their place; but the "málik," as the owner is called, retained the management and paid over *all* his rents to the ámil (just in fact as the zamíndárs at first did), except 10 per cent. which he was allowed. In most cases, at permanent settlement, the old "málik" was recognised as the zamíndár-proprietor and settled with. In some cases, however, as might be expected, the Musálmán officials and grantees had succeeded in ousting or reducing the máliks and becoming proprietors in their place; but it is curious that the old proprietary character was so strong that the new-comer almost invariably paid an "ex-proprietary allowance," or málikána, to the older family: and at settlement, in cases where it was not possible to restore them, the málikána allowance was, by the terms of settlement, still continued.

The sub-tenures in these districts do not materially differ from those I have already described, and we find the same system of

[7] *Statistical Account*, Vol. XI, pages 95 and 125.

ijárás, istimrárí-muqarrarís, and so forth, with sub-leases called "katkina" and "thíka."

It is remarkable, however, that in many cases, where the estates are small, there are few or no intermediate tenures[8]. The proprietors are able to manage the estates themselves, and cannot afford the luxury of foregoing a part of their rental to secure the remainder without trouble.

In some places "shikmi" tenures are found, which in fact consist of small alienations of parts of revenue-free holdings: when these holdings lapse and become liable to assessment, the shikmi remains as a kind of tenant under the zamíndár with whom the land is settled[9].

In several of the districts "ghátwáli" tenures are found, such as will be described further on. There are also numerous free tenures for the support of religious objects, Hindu or Muhammadan; such are called brahmottar, shivottar, pirottar, hazrat, dargáh, &c. These are all tenures with something of a proprietary character.

§ 14.—*Tenants.*

The subject of *tenants* in Bengal generally can best be dealt with when I come to speak briefly of the Rent Law. Here I will only say that they are divided into two main classes—tenants with occupancy rights and tenants-at-will.

In most Bihár districts the tenants are called "jotdárs." Rents by division of produce are still very common[10]. Thus in Gáyá I find the "naqdi" tenants are those who pay money, and they are called "shikmi" if permanent, and "chikath" if on a temporary contract. The "bháoli" is the tenancy by division of produce; classified into "dánabandi" when the division is pursuant to an estimate or appraisement of the standing crop, and "agor-batái" if by division of the grain when threshed out.

[8] As in Tirhut.—*Statistical Account*, Vol. XIII, page 110.

[9] As in Munger.—*Statistical Account*, Vol. XV, page 117. "Shikmi" is from the Persian *shikam*, the belly;—one tenure inside the other.

[10] And the condition of the tenantry wretched, as a consequence.

§ 15.—*Tenures of the second class depending on natural features, &c.*

Such being a brief description of the tenures and under-tenures which had their origin in the old Revenue system, I may now pass on to consider the second group of tenures, which depend on customs of village organisation or on the natural features of the country. Such tenures will be found most frequently in districts where the village organisation is not altogether forgotten.

The Orissa districts, and those of the Chutiyá Nágpur division, will afford examples. A partial survival in Bihár has just been noticed.

In the Western Dwárs and in the Chittagong district, covered with luxuriant vegetation, we shall see more peculiarities of tenure, dependent on the clearing of land and the association of persons for this purpose. The same kind of tenures will also more conspicuously appear in the districts now forming the separate province of Assam. These tenures can best be described by localities.

§ 16.—*Orissa.*

The Orissa districts on the coast side of the hills exhibited in the parts further inland, something of the same features as the Tributary Maháls which occupy the hilly country. These tracts, it will be remembered[1], were possessed by chiefs whose estate was called a "qila'." The tributary chiefships are not within the limits of the revenue-settled districts, but several chiefs having a similar position within the districts became zamíndárs. In other parts there were no chiefs, but a proprietary position was conveyed by a settlement made with the most prominent men.

Among the tenures subordinate to these zamíndárí tenures, are the holdings which are the right of the headman called "muqaddam" (or pradhán in the south). Other village officials, who seem to have been accountants, are also recognised; and in right of these offices, are the tenures of the sarbarákár (or parsathi in the south). These tenures are practically proprietary. But that of the sar-

[1] See page 196, *ante*.

barákár (parsathi) was recognised at Settlement as hereditary, only when possession had been uninterrupted for a term previous to annexation in 1803. It is not alienable without the zamíndár's consent. The sarbarákár can also be ousted at any time from his official position, in case of mismanagement proved to the satisfaction of the Collector.

Another kind of secondary tenure, which seems to have arisen from sales of waste land to intending colonists, is called "kharídádárí."

The consequence of these customs was, that at Settlement the villages were for the most part separate estates, in which there were well-defined superior and subordinate proprietary interests,—the zamíndár first, and below him the muqaddam, the pradhán, and so forth; under them again were tenants in two classes known as "tháni" or resident, and "pái" or non-resident. The former paid rent at high rates, but looked for their means of livelihood, not to the land which they cultivated for the landlord, but to plots which they held separately and free of rent. All the land will then be either "sír," the special holding[2] of the proprietor or sub-proprietor, and tenanted lands, held by tháni or pái cultivators.

§ 17.—*Chutiyá Nágpur.*

In the districts of this division we shall find examples of nearly every kind of tenure; that arising out of the village organisation, that created to defray the expense of protection from hill robbers, and that arising from special measures to promote the cultivation of wild and waste country. In some instances where the whole district, or some large estate on it, is still owned by a Rája or chief, who is in the position of superior proprietor, we may find tenures created by the chief with the object of providing for the maintenance of his brothers or other relations. An example of this

[2] The tenant who held the "sír" land of the proprietor is called Chándnádár. Tháni tenants (and also Chándnádárs) have their rents fixed for the term of settlement.—(Stack's Memorandum on Temporary Settlements, 1880, page 582.)

may be found in Rámgarh or Hazáribágh. The chiefs created also various tenures for the greater facility of realising their revenue; thus in the estates we find "taluqs" and "ihtimáms," ijárá and muqarrarí leases; tenures of this kind I have already noticed, as seeming invariably to follow the creation of great estates under our system.

The tenures which arise from the necessity of finding maintenance for members of the family are spoken of as "kharaposh." A grant of this nature also is the "hákimáli" or grant for the support of the hákim or chief's second brother.

In the hilly tracts the "service" grants are called "ghátwálí" and "digwárí." They were made to reward exertion and to support the police force necessary for keeping open the hill passes and protecting the lands at the foot of the hills against robbers.

The holdings derived from the grants to clear and cultivate the waste are known as "jangalbúri," "nayábádi," &c. In the Mánbhúm district I find mention of a tenure called "jalkár" or "jalsázan," which indicates a holding of as much land as can be irrigated by damming up the head of a ravine in the low hills, and so obtaining a tank of water.

In December 1880, a very interesting "Official Paper" appeared in the *Calcutta Gazette*, describing the tenures in part of the Lohárdagga District.

This describes the procedure for the settlement and record of the rights under the "Chutiyá Nágpur Tenures Act" (Bengal Act II of 1869). The value of such a legislative provision will be evident from the existence of these curious tenures.

I shall make no apology for entering into considerable detail about this tract of country, because though the incidents here recorded relate to certain Kol tribes called "Munda" and "Oráon," they have their counterpart in many other parts of India, and are peculiarly interesting and instructive. Here we are, in fact, introduced to the original state of village landholdings; and we can trace clearly the influence of one of two great causes of change in landed

interests, which I alluded to in the introductory sketch, namely, the advent of a Rája taking possession of the country and modifying all its customs of landholding.

Originally, it would seem, these Kol tribes formed villages of ancient Hindu type. The "village staff" consisted of a Munda or headman; and here, besides the secular headman, there was a spiritual head-man called "Pahan." There were also the usual staff of communal artisans and servants, the water-carrier, the priest's assistant, the barber, the potter, and the washerman. They were remunerated by dues in grain or small holdings in land. The headmen were the representatives of the original clearers of the land and founders of the village. The tenure of the original owners was called "khúnt katí" (tenure on strength of original clearing), and the land so occupied was called the "khúnt." The village lands then consisted of (*a*) lands held in the khúnt katí tenure by the families of the secular and spiritual headmen; (*b*) lands held by tenants who paid a portion of the produce to the headmen; and (*c*) lands known as "bhút keta," and by similar names, implying fields set apart for the service of spirits, divinities, &c., who were supposed to watch over the families and secure good crops to the village.

For mutual support and protection, these villages were grouped in circles called "parhá," and a chief called a "mánki" presided over the group. He was probably a successful village headman who acquired a certain influence and was elected as the general protector. He appears to have held lands for his support in several villages, but had no equal or regularly levied contribution from all. In process of time, however, a Nágvánsi (Rájput) Rája appeared, who reduced the country to subjection, and then the change began. In the first place the Rája took certain lands as his own special demesne; then he granted estates to his relatives and minor chiefs, Kúnwars and Thákurs; and as he found the original village owners liable to resist his acts, he called in the assistance of foreigners, to whom he granted "jágír" estates, requiring of them military service. Many similar grants were also made to Brahmans, though

their service was religious, not military; namely, to civilise the tribes or convert them to Hinduism.

These new grantees may, in some instances, have taken up unoccupied lands; but in many more they came as landlords over the heads of the original village-owners.

The same system afterwards received a further development owing to an accidental circumstance. It would seem that North Indian traders came down with horses, brocades, and other wares which were tempting to the semi-barbarous Rája, who accordingly was fleeced by the traders and got heavily into debt. As he could not pay in cash, he began to give out thíkas or leases, by which, in fact, the creditors were put in charge of certain tracts of land and allowed to realise the State revenues, and so repay themselves.

It is not difficult to imagine how very soon these chiefs, foreign grantees, and farmers, seized on the lands and gradually became landlords, reducing the village-owners to the position of being their tenants.

In the first instance, no doubt, the Rája had no design of interfering with the villages: having acquired certain lands for himself, he was content with levying a certain contribution all round. But when he introduced his grantees, they gradually worked that change which, in taking a general survey of tenures in India, we have already noticed to be inevitable.

We can thus trace back the history of the features of the land tenure as they exist at the present day.

First there is the Ráj-has,—the land in the royal demesne and held by the Rája's tenants. Next there is the Mánjhí-has (or the mánjhí-angs) land, consisting of the estates in which the Thákurs, Kunwárs, jágírdárs, thíkadárs, and others established themselves, getting hold of the best lands for themselves. But the chiefs and grantees could not absorb the entire right in these lands. The ancestral communities representing the original village founders (khúnt kat) were still strong enough to retain much of their original holdings[3],

[3] The headman's holding being still called "mundaí" or "mahtoaí" according to locality.

and the superstitions of the grantee bade him leave alone the "bhút-kheta" or religious holdings, if he did not respect any others. These two excepted and preserved ancient tenures remained as "bhúínhárí" lands[4].

In the mánjhí-has lands there are two grades of interest: there is the superior, and the actual cultivator, who may be merely a located tenant, or some person who had a closer connection with the land and a right of occupancy[5].

There may be bhúínhárí lands also in the mánjhí-has, or in the royal demesne. The bhúínhárs are now considered as subordinate proprietors to the chief or the superior, whoever he may be: they never sunk to the position of mere tenants[6]. These tenures are of course heritable. Non-religious lands are alienable with consent of the proprietary family. Religious (or bhút-kheta) lands are not alienable, they are held by the Pahán or village-priest for the time being, and the priest is also the trustee or guardian of the sacred groves or "sarnas."

It would naturally be supposed that all these bhúínhárs, being really proprietors, would hold rent-free as regards the later coming landlord; but the power which enabled the landlord to reduce them to a subordinate place also enabled him to exact a certain payment, though not a full rent, which had to be adjusted at the Settlement proceedings under the Act.

[4] The religious holdings or bhut kheta which form part of the bhúínhárí lands, are divided into dálikatárí, pánibhara, and bhút-kheta. The pánibhara (which is a holding for religious menial service) includes the "murghi-pakowa," plots held by persons as a reward for the duty of cooking fowls on the occasion of religious feasts and ceremonies.

[5] "Tenants-at-will" who cultivate on a "saíká," agreement by which the produce is shared, have no right of occupancy. Tenants of the other kind are rewarded with certain grants of land called "bhet-kheta," sometimes on the estate itself, sometimes in the Ráj-has lands.

[6] There may be occupancy tenants, as, for example, immigrants who first cleared the lands on which they settled, but who, not being Kols or members of the original khúnt proprietary families, never held land on the khúnt katí tenure, or became bhúínhárs. They are called kórkárs; they hold for three years rent-free, and then at half rates.

These "rents" were not acquired without some difficulty. There have been constant discontents, and in 1832 and 1858 there were open outbreaks.

The bhúínhárs at first were required only to render service to the chiefs, such as giving three days' labour in digging, in cutting wood, in carrying so many loads of grass, bamboos, or the personal luggage of the chief. In time, small money or grain rents were exacted.

The theory is that a bhúínhár can never lose his right, and that if he goes away, owing to oppression, poverty, or other cause, his descendants may return and claim without limit of time.

The Tenures Act could not recognise this absolutely, as it would be obviously impracticable; it therefore fixed a period of twenty years for absentees to return and make good their claim.

Another curious question arises with reference to bhúínhár lands, which I must allude to because it throws light on the question of the waste lands and who owns them.

In many cases we have seen that the village-owners have occupied a definite area, waste and all, the waste being the joint property of the whole body. In such cases, it is only where there are large ranges of hills or great wastes not included in village areas, or where the villages claimed a large excess of waste for which they had no use, and probably no real claim, that such waste remained at the disposal of the State or paramount power. Now it seems that originally the Kol villages consisted partly of high land, which was waste and only partly or occasionally cultivated, and partly of low lands on which rice is grown, and which naturally were the first to be occupied. The bhúínhárs claim that under the original village constitution, a definite area was allotted to each village, both of upland waste ("tanr") and rice land.

But as the former was not so definitely occupied as the latter, when the village constitution was overborne by the Rája and the chiefs, it naturally became a question whether the bhúínhárí tenure should now be recognised over the uplands as well as over the rice-

fields. The question had to be determined by the settlement, according to the actual facts of occupation[7].

Any bhúínhár may, of course, also hold land in another character, as an ordinary tenant in the Mánjhi-has or Ráj-has lands.

In the Ráj-has lands there may now be a chief who has become zamíndár or superior landlord, or the Government may represent the superior estate; all the cultivators are in either case regarded as raiyats or tenants, and are called by various names, such as utakár, korkár, chatwa, &c.; some having occupancy rights.

The reader will readily understand how this system of gradual modification of the old tenures, and the growth of rights in a superior grade, has given rise to perpetual rivalries between the old and new classes of tenure-holders. The new-comers encroached, imposed cesses, and seized on ancient holdings, dispossessing the original owners, when they were weak; while in their turn the bhúínhárs tried to claim lands which they had long lost, and not unnaturally clung to traditional rights, which had really become obliterated past practical recognition by any law court or settlement authority. All this demanded a system of local enquiry and careful securing by record, of the rights to which each class seemed equitably entitled. A Special Commission was accordingly created by Bengal Act II of 1869[8]. It can hardly be expected that so difficult a task should be carried out perfectly, or that the old bhúínhárs would be content to accept the inevitable outcome of years of change and development. But there is no doubt that great good has been effected.

§ 18.—*Tenures in the Sontál Parganas*[9].

In order to describe the tenures, this district should be divided into three sections. First, there is the narrow strip bordering

[7] Should it not appear that the bhúínhárs practically had not occupied the waste, still they would be allowed certain rights of user, of pasture, and wood-cutting.

[8] The Act proposes to deal with the rights on the Mánjhi-has lands and the rights of bhúínhárs, not with tenants on Ráj-has lands.

[9] For this information I am indebted to Mr. W. Oldham, the Deputy Commissioner, who kindly prepared a memorandum for me.

on the old established districts of Múrshidábád, Bírbhúm, and Bhágalpúr: these lands are permanently settled under zamíndárs, and exhibit just the same features of tenures as the ordinary districts. The zamíndárs have here, as elsewhere, created the usual subordinate tenures for the realisation of their income, and we find the "patnidár" and the muqarraridár, and various forms of "thíkadár" or rent-farmer.

But two special features have been recognised; these various tenure-holders must always collect these rents through the village headman, and all the "raiyats" or cultivators have permanent holdings, unless they are sub-tenants or cultivating labourers under other raiyats.

Next in order comes the jungle tract, which is principally occupied by the Sontáls, who have emigrated and occupied nearly the whole of it, and spread into the valleys and lower portions of the third section—the hill tract or Dáman-i-Koh.

This *second* section is owned mostly by zamíndárs who retained the superior proprietary title, and employ the usual means of subleases, &c., in realising their rents.

Wherever the estates border on the hills, the landlords have created ghátwálí holdings to reward service in protecting the hill passes and keeping them against robbers. This tenure is found to exist in Chutiyá Nágpur, the Central Provinces, and Berár, wherever there are hill tracts. In part of Sontália, around Deogarh, however, the ghátwálí tenures have a somewhat peculiar origin. This tenure is so curious that I shall extract *in extenso* the account kindly sent me by Mr. Oldham:—

"It was the practice throughout the district, and in the portions transferred from Bírbhúm, Bhágalpur, or Múrshidábád, for the great zamíndárs to assign grants of land, generally at the edges of their estates, in selected passes (ghats) or other spots suited for forts to check the incursions of the forest tribes, as the remuneration of the person or family entrusted with the guardianship of the pass, and of the specified number of armed retainers whom he was bound to maintain.

"This was the general character of the ghátwálí tenure. The grants were rent-free. The grantees held while they performed the conditions of their grant. The establishments of retainers varied much in size, according to the purpose for which they were wanted, and the extent of the lands assigned varied in proportion. Some of the holders were wardens of extensive marches, and their successors at this

day occupy the position of considerable zamíndárs. Other grants were merely for the purpose of checking the ravages of wild beasts; one in particular was given for the destruction of elephants.

"In the Bhágalpur district the grants were considered "police lands," and when the need for the grantee's services passed away, they were resumed by Govern ment and held for some time as Government estates. One proprietor, however, appealed against this mode of dealing with them, and the Privy Council decreed that he, and not the Government, had the right of resumption; and most of those resumed have been restored and absorbed in the zamíndárís of which they formed a part.

"In the part of the district which once belonged to Bírbhúm, no resumption or restoration has taken place. The grants, with an exception to be noticed, are of small extent, and are still held as rent-free lands, and a nominal service rendered for them. Many of them have changed hands by sale and by encroachment, though such alienations are not recognised or permitted when known by Government.

"An exception to the ghátwálí as thus generally described, is the sub-division of Deogarh, which consists entirely of ghátwálí tenures of a distinct kind. This country, which consisted of a forest tract, amid which rise precipitous, isolated hills, was held by a number of Bhúíyá chieftains of an aboriginal or semi-aboriginal race, and was conquered by the Muhammadan sovereign of Bírbhúm about A.D. 1600. The conquerors, however, were never able to bring the tract into complete subjection, and at last effected a compromise with the Bhúíyá chiefs, under which the latter were to hold half of their respective tenures rent-free, on condition of their maintaining retainers and performing the services of warden of the marches as above described. Engagements on both sides were never properly fulfilled, and in A.D. 1813 the Government finally intervened and concluded an arrangement with the ghátwáls by which their quota of rent was paid directly to itself, and they were still bound to render, what the Government of the day styled, their police duties.

"Their system of sub-tenures coincides with that existing in the precisely similar tenures in the Chutiyá Nâgpur division, on which Deogarh abuts. They held watch and ward, and maintained militia and police, and farmed out each village to a person called *mustájir*, on whom fell fiscal responsibilities only. These farmerships became hereditary, and consequently at settlement the holders were unwilling to accept the lower status and more onerous duties, as well as the restrictions as to sale and transfer, fixed for the village headman. They made an application to the Government, which conceded in return the right of sale to mustájirs of certain specified villages."

Subordinate to the zamíndárs in this second or "jungle" section of the district, the villages have a regular hierarchy of hereditary officials. In each village is a headman or mánjhí (when the village is not Sontál the headman is called pradhán or mustájir according to the locality). Several villages form a "chakla" with a chakladár or pramáuik over them. Over several chakladárs again is the des-mánjhi (these have now no functions, but are still

remembered). Lastly, over a whole pargana is the "parganait." In the Dáman-i-koh or hill tract where the Sontáls have occupied the lower hills and valleys, this official is regularly recognised by Government; he not only gets a commission of 2 per cent. on all rent punctually paid, but also an allowance from each village. Outside the Dáman-i-koh, he is only locally recognised and sometimes does not exist at all.

Many of these officials have rent-free or lightly-assessed lands, held in virtue of the office: the holding is spoken of as "mán" or jágír. Thus the headman's land is "mánjhímán." The village watch ("gorait") and some others also, hold "chákarán" lands as remuneration for their services. In the Sontál villages there are also the usual tenures for priests, and grants for religious purposes may be found under the name of "Sivahotra" (Siva's plot), &c.

In the *third* section of the district—the hill portion called Dáman-i-koh—the level portions in the valleys have been occupied by Sontáls exhibiting the same village system as already described. It is curious to remark that these people apply the term "zamín" *land* (which they corrupt into "jamí") only to level (rice) land. In the hills and along the slopes and ridges, the old hill (Kolharian) tribes still hold their own: they live by "júm" or temporary and shifting cultivation.[10] In theory, in this section, all the land belongs to Government, and the people are "raiyats." I have before mentioned that this is due to the withdrawal of the tract from the Regulations and from the settlement, owing to continual disturbances between the Hindustani landowners in the plains and the people in the hills. To this day Government takes no revenue from the paháriyá; on the contrary, it allows certain pensions to the chiefs called "Sardárs" and to their deputies or "Náibs," and to the mánjhís or headmen of tribal sections.

Though the Government has never formally recognised any proprietary right besides its own in the Dáman-i-koh, it has never interfered with the people who treat the hills as their property.

[10] Locally called "Kurowa bari."

"Every hill," says Mr. Oldham, "is claimed as private property, and the hills are bought and sold."

The whole of Sontália is, as I have said, settled under Regulation III of 1872 and Act XXXVII of 1855[1]. The Regulation contains a special rule about the *waste and forest land*, providing that excess waste may be excluded under certain circumstances from the defined village area. The provisions of section 15 should be referred to for detail. As a matter of fact, the Government has attempted no interference with the upper hills, but exercises a certain amount of protection over the forest in the lower ranges, by rules made under the old Forest Act of 1865.

§ 19.—*The tenures in jungle districts:—Chittagong.*

The tenures that are found in the districts which were originally covered with dense tropical jungle, have, as might be expected, reference to the arduous task of *clearing*. For example, in Chittagong: here a number of settlers, each group under its own chief, took up such plots of land as it suited them to clear; and a group of such clearings was called a "taraf." The subjects or followers of other leaders also settled in the vicinity; and so it happened that the lands belonging to the various tarafs were very much mixed up: each holder only knew what taraf he belonged to, because he came under such a leader or captain who was his tarafdár. When the permanent settlement took effect, those "tarafdárs" were recognised as the *owners* of the lands in their tarafs. Many of the tarafs originated in the location of bodies of troops by the first Muhammadan conquerors who were granted land instead of pay, to support them. These people were then allowed to remain on the land; only they were assessed to revenue when the jágír was resumed and the service no longer required. And the other tarafs originating in non-military settlements, were required to aid in the general defence, and held their tarafs in jágír in consequence. Thus it happened that all the tarafs consisted

[1] And its Revenue Administration is supervised direct by Government in the Revenue Department, not by the Board of Revenue.

of holdings granted by area. These were permanently settled and are of course full proprietary tenures. But at a later date clearing leases called jangalburí and patitábádi were granted by the Collectors, and far more numerous plots of cultivation were also occupied by mere encroachment. All such lands (other than the permanently settled "tarafs") were spoken of as "Nau-ábád" (newly cultivated) and none of them were formally recognised as proprietary tenures. The question of their exact position long remained doubtful, and I have described on a preceding page (194) how it was ultimately settled.

§ 20.—*The Western Dwárs.*

In part of Jalpaigúrí (the Western Dwárs) we find the settlers called jotdárs, and lands occupied called "jot." The jotdár is not recognised as the absolute proprietor of his holding[1]. Temporary cultivating leases given out by the Government officers are spoken of as "hál."

The country is regarded as a Government estate, the jotdár being the permanent occupant with a heritable and transferable title.

Tenants on a fixed lease are called here "chukanidárs." A "raiyat" means a man who is allowed to cultivate for one year. "Prajá" is the ordinary cultivator paying a produce rent, while those who agree for a money rent are called "thíkadár."

§ 21.—*Waste-land leases.*

Among the tenures that are founded on the clearance of the waste or jungle land, I suppose I should include those derived from the various leases and grants made by the British Government under the different "Waste Land Rules." In these cases, however, terms of the grant must be looked to for the nature of the tenure. Such grants were made chiefly in the Sundarbans and in Darjiling.

[1] According to the Bhútán custom the jot cannot be alienated to the prejudice of one of the family who would succeed on the decease of the jotdár. Mortgages also are only temporary. It would seem also that it was not the custom to sell the jot for arrears of revenue under Bhútán rule. See Statistical Account of Bengal, Vol. X, page 284.

CHAPTER IV.

THE REVENUE OFFICIALS, BUSINESS, AND PROCEDURE.

SECTION I.—OFFICIALS.

§ 1.—*The Board of Revenue.*

At the head of the Revenue Administration, and with control over all grades of officials below it, is the Board of Revenue, consisting of two Members with two Secretaries.

The Board of Revenue existed as far back as 1772, when it was composed of the President and Members of Council at the Presidency head-quarters. In 1781 it was remodelled as a "Committee of Revenue."

When the districts further north were annexed, it was intended that separate Boards of Revenue should be constituted for each group, and a Regulation was passed for the purpose. This law (Regulation III of 1822) contemplated one Board for the Lower Provinces, another to be called the Board for the Central Provinces with authority over part of Bandelkhand, Benares, and Cawnpore; while a third Board was to have authority over the Western Provinces.

In 1829 (by Regulation I) this plan was modified for the last time: "the Board of Revenue for the Lower Provinces[1]" alone remained, and the functions of the other Boards were made over to Commissioners, who now preside over the Revenue Administration of divisions (groups of two or three or more districts) and are subject to the control of the Board.

A Regulation of 1811 (still in force) enabled the Government to empower any Member of the Board to exercise all or any of the powers of the whole Board.

[1] This is the official title of the Board at the present day. The whole history of the Bengal officials may be found clearly summarised in the introduction to the Administration Report, 1872-73.

The North-Western Districts—Benares and those beyond—were afterwards made into a separate province, and then came under the Board of Revenue of that Lieutenant-Governorship.

§ 2.—*The Commissioners.*

The Commissioners appointed in 1829 were at first, beside their revenue powers, invested with judicial powers, both civil and criminal. Separate Civil and Sessions Judges were, however, afterwards appointed; and the Commissioners are now solely Revenue and Executive Superintendents.

Under the Commissioners of the divisions are the Collectors of districts, their assistants and deputies.

§ 3.—*The Bengal 'district':—'Sub-divisions.'*

The district in Bengal is the unit of administration just as it is in other provinces.

At present each district is split up into a number of sub-divisions, each of which is presided over by an Assistant Magistrate and Collector, or a Joint-Magistrate and Deputy Collector in subordination to the Magistrate and Collector of the district. Uncovenanted Officers, designated "Deputy Magistrates and Collectors," were appointed under Regulation IX of 1833; they were to help the Collector in Revenue matters, and they have criminal powers also: they are often in charge of sub-divisions. They occupy much the same position in the administration as the Extra Assistant Commissioners of the Non-Regulation Provinces.

This plan of creating sub-divisions is one of recent date, and it now distinguishes the Bengal district from the Panjáb or the Central Provinces (for example): there it is only when a district is very large, that an outlying or unusually populous section is made into a sub-division with an assistant in charge. The district in those provinces is ordinarily kept in hand without difficulty, because it is throughout divided into tahsíls, or comparatively small sub-divisions, each presided over by a Native Revenue and Executive

Officer called a tahsíldár, who has judicial powers, but so restricted as not to interfere with his more important revenue and executive functions. The tahsíldár is enabled to keep a thorough control over his tahsíl by means of the village organisation and his staff of pargana officials.

All this subordinate machinery from the táhsíl downwards, as we shall presently see, does not exist in Bengal. Consequently, in former days, the Collector at head-quarters was the only power over the whole district; hence the impossibility of his dealing with the cultivators in any detail, and the traditional necessity for the revenue collections being paid in by a comparatively few great estate-holders or zamíndárs. The gradual break-up of these very large estates, and the importance of securing the rights of the subordinate tenure-holders, however, have always rendered it desirable that there should be some more localised revenue control, and the tendency of later days has been to introduce local charges subordinate to the Collector. This was begun by dividing the districts into sub-divisions in charge of assistants.

§ 4.—*The Collector.*

The "Collector" has a history extending back to the year 1769, when our Government, though in possession of the right to administer the Civil and Revenue Government of Bengal itself, had not yet thought it advisable to attempt the direct administration of the districts by its own servants. The old native system was therefore left in operation, but officers called Supervisors were appointed to check its working. In 1772, when the Company at last undertook the direct civil and revenue management of the districts, these Supervisors were called "Collectors," but were withdrawn two years later in favour of "Provincial Councils."

In 1781 the individual supervision was found better than that of a body, and the Presidents of these Councils were alone retained as Collectors in fact, if not in name.

In 1786, Collectors were vested with powers both of Civil Judges and Magistrates; this was on the plan of the Board of

Directors in England, and was proposed by them as tending to simplicity and economy; but it was ill-suited to Lord Cornwallis' ideas, and in 1793 the Collectors were confined to their revenue functions.

Under Lord Bentinck in 1831, criminal powers were given to Collectors, but were again withdrawn in 1837, owing to the increase of the revenue work. The separation was, however, gradual, and went on from one district to another, till, in 1845, nearly all the Collectors had been relieved of Magisterial functions.

The restoration in its present form of the office of "Magistrate and Collector" dates from 1859[2].

The difficulty before felt of the possible overweighting of the Collector by an excess of criminal work is provided against partly by the appointment of Senior Assistants to the grade of Joint Magistrate[3], with criminal powers equal to the District Officer (though exercised in subordination to him), and partly by the modern system of sub-dividing the districts.

§ 5.—*His Assistants.*

Assistant Collectors were first appointed in 1821 under Regulation IV, and they could be invested with direct authority in Revenue matters in portions of districts. Assistants not so empowered, could only report on Revenue matters with a view to the Collector passing final orders[4].

I have already mentioned the Deputy Collectors of Regulation IX of 1833. Below them an order of Sub-Deputy Collectors has been recently created[5]. Beyond this there is no further subordinate Native agency.

[2] Despatch of the Secretary of State, 14th April 1859 (No. 15).

[3] Practically, the Collectors take most of the Revenue work and the Joint Magistrate most of the Criminal.

[4] Regulation IV of 1821, section 8. This is still in force.

[5] Deputy Collectors' appointments were at first confined to natives. The restriction was removed by Act XV of 1843. The Sub-Deputy Collector is a grade constituted by executive authority, but the Regulations enable such an officer to be vested with such powers of a Deputy Collector as may be necessary.

§ 5.—*Pargana and village officers.*

At the commencement of our rule, there were still patwáris, the relics of the old village system, and qánúngos, the relics of the Muhammadan system of Revenue[6], who supervised the Revenue collection. At first, the qánúngo was for the pargana what the patwárí was for the village. The patwárí registered all changes in landed right likely to affect the revenue; he kept the statistics of the village, and the accounts of revenue payments and balances, as well as of the payments which were actually made by raiyats and others to the "proprietors." The qánúngo did the same for his pargana.

This system is still in full force (though with many modern improvements) in other provinces where the "village" (or at most a group of a few villages or parts of villages) forms the "estate" which pays a separate revenue assessment. Without it, or something like it, a district where the revenue was to be collected from a number of such small estates, could not be managed.

But in Bengal the system got more and more out of harmony with the modern practice, because, with the growth of the zamíndár, the importance of the village and of the pargana for revenue control purposes disappeared[7]. The zamíndár gradually ceased to be a revenue collector and became in fact a contractor for a lump sum to be paid to the treasury, so the qánúngo's inspection was first

[6] The Qánúngo, as such, was a Muhammadan officer, but, no doubt, supervisors of groups of villages were common under Hindu Rulers. The Maráthás also had a similar system, *e.g.*, the Despandyá of Central India.

[7] In Chittagong, where there were only groups of jungle clearings and no attempt at villages in the regular Indian sense, no patwárís were ever heard of, because there had been no village organisation; but qánúngos remunerated by certain special dues, or grants of land, existed in full force up to the time of the permanent settlement. In Chittagong, however, the fact that the estates are now of small size and vast number, suggests an organisation of the kind. At the present day there is in effect, in each sub-division of the district, a number of native local officers like the Panjáb tahsíldárs; and a system of pargana account and registration, as well as a subordinate estate registration and account.

set at nought and then became really unnecessary [8]. In the same way the patwárí was intended to control the zamíndár's gumáshta or agent for making local collections; but as soon as the State ceased to look into the details of local collections, and concerned itself with the lump sums, the patwárí, where he was retained at all, became the mere servant of the zamíndár.

§ 6.—*The Qánúngo.*

The District Revenue Collector had simply to take the lump sum of revenue assessed on a few estates of large size: he abandoned, under the policy of 1793, all interference with the internal affairs of the great landholders. It was supposed, however, at first, that qánúngos would be useful, and in 1786 orders were issued that the "ancient constitutional check of the canoongoe's department in regard to the collections and on all officers therein employed, be now revived and placed by the Committee of Revenue in a state of full and effectual operation [9]."

It was not, however, to be expected that this revival would prove of any use. After the permanent settlement was concluded, the qánúngos at head-quarters were abolished in 1793 [10]. One more attempt was afterwards made by Regulation I of 1819 to restore them, with a view to the supervision of the patwárís, whose resuscitation had been more persistently attempted (as will be presently explained). But the whole arrangement proved a failure and was soon abolished finally, except in Bihár and in Orissa, where the settlement is under Regulation VII of 1822, and more like a North-West settlement.

§ 7.—*The Patwárí.*

The patwárís were longer retained. At an early date it seems to have been thought that patwárís might be useful in collecting

[8] Macneile's Memorandum, section 196.

[9] See Cotton's Memorandum on Revenue History of Chittagong, Appendix I, page 186. The idea seems to have been to make the qánúngos a check on the Collectors. "It was," says Mr. Cotton, "in harmony with the system that prevailed under Mr. Hastings' administration, of distrusting the local agency, whether European or otherwise, employed in the collections."

[10] Fifth Report, page 19; and Cotton's Chittagong, page 186.

facts regarding land tenures, rents paid by raiyats, and other such matters which would help the Collector in adjusting the revenue totals properly over divided estates, and the Courts in deciding land cases and rent suits. It was "solely" for this purpose that they were retained[1]. Patwárís were not, however, universally appointed, because it was felt, and in some quarters pointedly stated, that the object was chimerical. The patwárí would either be regarded as an enemy by the zamíndár, who would then conceal all the true facts from him, or he would become a tool of the landowner, and then in his ostensible position as a public officer would only have greater facilities for defrauding the revenue and aiding in the oppression of the raiyats. It was then determined that it was no use trying to make the patwárís public officers[2]: they were only to be the zamíndár's servants; but it was hoped by the resuscitation of the qánúngos in 1819 (just spoken of) they might be controlled to some extent, so that at least their accounts should be available for reference to the Courts and Revenue Officers. But this was in 1827 reported a failure, owing to the systematic and determined opposition of the zamíndárs to all arrangements having for their object the organisation of information regarding the land tenures of the country and the produce of the soil[3].

The struggle to make any use of the patwárís where they existed was then gradually given up[4].

§ 8.—*The present position of these officers.*

At the present day, qánúngos are retained in Orissa and Chittagong. In the former they are of use in various matters connected with the road cess assessments to the supervisors of the

[1] See Regulation VIII, 1793, section 62.

[2] And this of course sealed the fate of the institution. To be of any use, the patwárí, though hereditary claims and even the wishes of constituents may be taken into consideration in his appointment, must nevertheless be purely a public servant, appointed and liable to be dismissed by the Collector. But in truth he is part of the village system, and cannot be officially utilised in a zamíndárí at all.

[3] *Vide* the Board's Report quoted in Macneile's Memorandum, section 200.

[4] See Macneile, para. 201, page 137. Government of India to Bengal Government, No. 88 of 3rd January 1851.

accounts of batwára or partitions which are common. There is a qánúngo at head-quarters, and others in the district.

Patwárís have been abolished in Bengal proper, though still some question remains as to their being employed in temporarily settled estates. But the Chittagong district furnishes an exception. Here some kind of local establishment has always been necessary and the qánúngo also has always existed. In this district (exceptionally) there is an establishment of tahsíldárs and subordinates not unlike that which is found in Northern India.

In *Bihár*, where patwárís exist, under Regulation XII of 1817, they are retained, and are useful. But no attempt is made to get them to prepare regular village accounts[5]. They are also partly Government servants, partly subordinates to the zamindár.

[5] In a Report to the Local Government (No. 712A., 26th October 1880) the Board remark—

"The Board wrote in their Report in 1879-80 (§ 74)—" As regards Chittagong . . . a tahsil establishment has been proposed, which, if sanctioned, will greatly improve and strengthen the executive machinery of the district. . . . The principal difficulty of khás management in Chittagong lies in the very large numbers of almost infinitesimal properties under management, and in their scattered position.

"In Noakhally, the Government estates are mostly island 'chars' separated from the main land by large and tempestuous rivers, and their inaccessibility is the chief difficulty in the way of successfully collecting the revenue from them. Another difficulty arises from the fact that the chars were cultivated, in a great measure, by non-resident raiyats, who settle on the lands for a portion of the year, and disappear after reaping their harvest, so that it is no easy matter to realise their rent.

"The several laws (referring to Regulation XII of 1817, &c.) which refer to patwárís imply a condition of agricultural tenancy which has now passed away for ever. They assume that a village is ordinarily in the hands of a single zemindar, collecting directly from the ryots: or (in cases in which the zemindar may have refused to engage) of a single farmer paying revenue directly to Government. Even when more zemindars than one are referred to as proprietors, they are to be understood as co-sharers in the same estate—not as owners of separate mehals.

"It is easy to see that under such circumstances the patwarí might really occupy the position of the village accountant, and his papers might furnish valuable information to officers engaged in the decision of rent suits on the partition of estates. Under-tenures being few in number, and the proportion of cultivated land being comparatively small, the village register was probably a brief and simple document, and the local knowledge of the canoongo enabled to him to detect any inaccuracies or omissions.

In *Orissa,* there were very few patwárís ; they existed only in 404 out of 3,304 estates. These are maintained to do what they can locally, but no general preparation of village accounts is required of them, and the former plan of requiring the proprietors to submit such accounts where there was no patwárí, has been abandoned.

SECTION II.—REGISTRATION OF LANDED PROPERTY.

§ 1.—*Object and practice of registration.*

With the exception of those estates which are settled under Regulation VII of 1822, the great body of the estates of Bengal proper came under the permanent settlement, and for the purposes of that settlement there was, as we have seen, neither a demarcation of boundaries nor a survey, nor was there any enquiry into or record of, the various classes of landed interests. A list of the different zamíndárí estates and the revenue assessed on each, was all that was kept.

But it was the intention of the legislature from the first that there should be at least a register kept up, showing the extent and particulars of each estate separately assessed with revenue payable to Government. The object was to enable the Collectors to apportion the revenue in cases of partition, and to enable the Civil Courts to know when an estate changed hands, or happened to be transferred from one district to another. The registers were first directed to deal with the land as grouped by estates only [6], but after-

"But the existing condition of things is altogether different. The zemindar of the present day, instead of being the owner of the entire village, is the proprietor of one out of a multitude of estates within the village boundary. The farmer of the present day, instead of holding under Government an estate for which the zemindar has declined to engage, is simply a ticcadar under the zemindar. The great mass of the ryots pay their rents to putnidars and other tenure-holders, and the zemindar has no direct concern with them. It is clearly shown that the patwarí, who is only the nominee of one or a few among a number of proprietors, has no means of preparing an accurate village account.

[6] And any estate might have lands belonging to it scattered over half the district or extending into other districts.

wards pargana registers dealing with the lands as they lay, and accounting for every plot in each pargana and its sub-divisions, were ordered. The law on this subject was never very well carried out, and the Regulation was both cumbrous and incomplete. It is, however, unnecessary in this place to dwell on the history of the past; it is enough to turn to the present law (Bengal Act VII of 1876)[7].

The object of the registration is simply to know who is the person answerable as in possession, for every plot of land in the district. The possibility of overcoming the difficulties of the old system is largely owing to the land survey, of which mention will presently be made. In the course of the survey, descriptive lists of the land surveyed were prepared (and the survey followed the local areas or villages, or was, in revenue language, *mauzawár*). Registers showing the estates as made up of lands in different villages, or of groups of villages locally compact (*i.e.*, mahálwár registers), are easily prepared from the first mentioned, by simply abstracting them.

§ 2.—*Form of registration.*

The registers at present required by law are:—

(A) A register showing the revenue-paying lands in the district. [This is divided into two parts, to show the lands which belong to estates the revenue of which is payable in the district, and lands within the district which form portions of estates whose assessment is payable in other districts.]

(B) A register of revenue-free lands. [This is divided into three parts showing (I) perpetual revenue-free grants; (II) lands held by Government or companies for public purposes free of revenue; and (III) unassessed waste land and other lands not included in part I or II.]

(C) Is a register of lands paying revenue and those held revenue-free arranged "mauzawár," *i.e.*, the register is a list of the

[7] See also Chapter V of the 1st Volume of the Rules of the Revenue Department (edition of 1878).

villages in each local sub-division (adopted for the purpose by order of the Board) and accounting for all the lands in each village, showing to what estate each belong which are revenue-free, and so on.

(D) Is an "intermediate" register for all kinds of land, showing the changes in proprietary right, occurring by sale, succession, lapse, or other transfer, and changes caused by the alteration of district and other boundaries.

The registers are only re-written when the changes have been so frequent as to affect the original register very considerably and make it no longer of any use for reference. The Act makes it obligatory on persons interested to give information with a view to the preparation of the registers. It should be borne in mind that registration only describes the person in possession. It decides no question of right. Section 89 of the Act expressly states that any one may sue for possession or for a declaration of right, the Act notwithstanding.

§ 3.—*Dákhil-khárij.*

The proceedings for reporting and registering changes in proprietorship are spoken of as "dákhil-khárij," and closely resemble the same procedure in other provinces. The "dákhil-khárij" proceedings are solely concerned with the fact of, or right to, possession. If the applicant's possession of, succession to, or acquisition by transfer of the property is disputed, the Collector will summarily determine the right to possession, and will then see that the party is put in possession, and will make the entry in the register accordingly [8].

The details of procedure for obtaining mutation of names will be found in the Act.

In most districts the work is now complete or will shortly be so. In Chittagong the number of holdings is so large that, in 1879, it was said it would take three or four years to complete the registers. In the Katák districts there is a source of unusual

[8] Bengal Act VII of 1876, section 55, as amended by Act V of 1878.

labour in the number of petty revenue-free holdings, and the work is not yet complete.

The Revenue Report of 1879 contains the following particulars of the working of the Act (excluding Chittagong) :—

Total applications for registration up to 31st March 1880.	Disposed of during 1879-80.	Pending on 1st April 1880.	Total applications granted up to 31st March 1880.	No of cases noted in preceding columns actually entered in register.	Remaining to be entered.
720,007	137,755	89,417	517,779	489,297	27,243
					(1,239 applications relating to claims to ex-proprietary allowance were cancelled.)

§ 4.—*Registration of subordinate interests in land.*

It will be observed that these registers do not profess to deal with any subordinate rights or interests; there is nothing in Bengal which answers to the "Record of Rights" of the North-West Provinces [9]. It so happens, however, that the Road and Public Works Cess, Bengal Act IX of 1880 [10], has resulted in a record of subordinate rights also. The road cess is a tax levied on all classes of proprietors, including every grade of tenure-holders, down to a limit of cultivators paying Rs. 100 in the year as rent, and hence a register has to be made of these. But the returns obtained are not satisfactory below tenure-holders of the first degree [1]. There is no legal validity, as evidence of right, attached to these returns.

There is another method, however, of registering under-tenures. It has been always the law that when an estate is sold for arrears of revenue, all leases and under-tenures (with certain

[9] Except of course in temporary settlements under Regulation VII of 1822.

[10] Acts X of 1871 and II of 1877 have been repealed and superseded by the Act quoted in the text.

[1] Administration Report, 1878-79, page 373.

exceptions[2]) are liable to be voided, and the purchaser gets a clean and complete "Parliamentary" title. This is so under the Sale Law (Act XI of 1859) and its later addition, Bengal Act VII of 1868. To protect such under-tenures the Act provides[3] that they may be registered either in a "common" or a "special" register[4]. Registration in the former protects them from being voided on sale of the estate for arrears, by any party other than Government; and special registration protects them absolutely. The Act also provides that the rights of *sharers* may be protected (and this is important, because otherwise the default of one sharer might cause the whole estate to be sold). Separate accounts are opened with sharers on application. In 1879, 14,442 such separate accounts, with a total revenue of Rs. 39,43,667, were on the books. Separate accounts can also be opened for specific landholdings (section 11, Act XI of 1859); of these, 1,736 (Revenue 3,69,664) exist.

For the procedure necessary to the registering, the Act itself must be consulted.

§ 5.—*The Taujih Department.*

For purposes of revenue collection, besides the lists of estates just described, there must be kept up lists showing the revenue payable by each estate, or separately assessed portion of an estate. There is a general district revenue roll, divided into two parts; one showing the revenue fixed permanently or for a time, and payable by proprietors, farmers, or other engagees for the whole; the other showing the fluctuating revenue in estates in which the raiyats pay direct to Government. It is not necessary to go into further detail on this subject[5].

[2] Described in section 37 of Act XI of 1859.

[3] Act XI of 1859, sections 38 to 50.

[4] Up to the end of 1879, the common register contained 3,584 holdings with an area of 3,908,532 acres and a rental of Rs. 22,09,988;—the special register contained 292 holdings, of 611,191 acres and a rental of Rs. 3,27,474.

[5] The detail may be found in Chapter VI, Rules of the Revenue Department Vol. I (1878). The revenue roll is written up by the Taujih-navís: the establishment which keeps the rent roll and the accounts of each estate, with the amounts collections, and balances, is spoken of as the Taujih Department.

SECTION III.—SURVEY.

As might be expected, a very few years' experience of questions of assessment of lands wrongfully claimed, of resumption proceedings in the case of invalid grants, and indeed of revenue administration generally, showed the absolute necessity of a reliable survey.

A revenue survey was accordingly organised, and maps of districts and of the estates they contained were prepared. Only the village boundaries were surveyed, unless, indeed, a village contained lands belonging to several estates, in which case the boundary of each group of lands had to be shown. From the list of surveys given in the Administration Report of 1872-73, it would appear that the Orissa districts were the first completed, the survey beginning in 1838. The report states[6] that almost the whole of the provinces had been surveyed, so as to show estates and village boundaries, but that only in a few places had a field-to-field demarcation been made. There also existed no legal provision for the maintenance of boundary-marks, or for compelling their erection.

Previous to 1875, as far as permanently settled estates were concerned, the process of revenue survey was carried on without any authority given by law. Regulation VII of 1822 could not be quoted, since it applied to non-permanently settled estates, and could not warrant any action with reference to estates in which there could be no question of re-settlement. In 1847, indeed, a law had been passed regarding the survey of lands liable to river action[7], and the principles of this law are still maintained under the Survey Acts. The whole business of survey is now regulated by Bengal

[6] Summary, page 86.

[7] Act IX of 1847. In the case of the alluvial lands the survey is treated as a special matter: it is required only along the banks of the great rivers. At present the special branch which deals with this work—the "Diyara (Dearah) Survey" as it is called—is confined to the Dacca Division. It is worked by non-professional agency under the Deputy Collectors. The object is to "identify and relay on the ground the boundaries of villages which have been subject to fluvial action and of which the boundaries cannot in consequence be identified; also to ascertain and assess lands which have been added to the estates by accretion. (Board's Revenue Administration Report, 1879-80, § 92.)

Act V of 1875. It is not my intention to go into any detail as to the procedure, but a general outline may be stated so as to furnish a clue or guide to the study of the Act itself when necessary.

The Act allows a survey to be made extending not only to districts and to estates, but, if ordered, to defining fields and the limits of tenures.

After provisions relating to establishment, the Act requires a proclamation to be issued, and persons to attend and point out boundaries, clear lines, and so forth, so that the survey may begin.

When the demarcation is complete, the persons who pointed out the boundaries are required to inspect the papers and plans representing such boundaries, and to satisfy themselves as to whether the boundary-marks have been fixed according to their information. The plans and papers are to be signed by these parties, in token that the marks *are* shown in the maps or papers in the places where they declared they should be.

The Collector can always set up temporary marks, and may set up permanent marks; and, after notifying their number and cost and giving opportunity for objections to be heard, he may direct the cost to be apportioned among the land-owners or tenure-holders concerned. Provision is made for the permanent maintenance of these marks[8].

Passing over the detailed provisions for determining who shall bear the cost of the boundary-marks, and how it is to be apportioned, I proceed to the subject of boundary disputes[9]. Here the Collector is to decide on the basis of actual possession, and his order holds good till it is upset by competent authority. If possession cannot be ascertained, the Collector may attach the land till one party or the other obtains a legal decision; or the Collector may, by consent of the parties, refer the matter to arbitration. There are also excellent provisions for relaying any boundary which has once been decided, but which has become doubtful or disputed.

[8] Sections 19 and 20.

[9] See Part V, section 40 *et seq.*

Full provisions also will be found for protecting boundary-marks from injury and restoring them when damaged.

The Act, it will be observed, does not say anything about the records and registers which the Survey Department prepare. These particulars, and rules about the scale, and so forth, must be sought for in the Board's Revenue Rules.

Section IV.—Partitions.

This topic generally finds a place among the topics of revenue procedure. Owing to the fact that by the native laws, the sons or other heirs succeed together, it follows naturally that any one of a joint body of owners may reasonably require that his interest and share should be separated off and assigned to him. This process is called "batwára" or partition. But, then, such a separation may affect the Government revenue: since, if an estate assessed with, and liable as a whole for, one sum of revenue, is afterwards divided into, say, four properties, the Government interest would be considerably affected, unless the whole estate remained, as before, liable for the entire revenue.

This fact has led in Northern India to a distinction between "imperfect" and "perfect" partition. When the partition is imperfect, the different shareholders get their rights separated and declared, but the whole estate still remains liable to Government for the whole revenue. In "perfect" partition the responsibility to Government is also divided, and the shares henceforth become separate estates, entirely independent one of the other. It has always been therefore a moot question how far partition should be allowed. The question, indeed, has most interest in those provinces where the village system is in force. That system, as the student will have sufficiently gathered from the Introductory Sketch, is based on the joint responsibility of the community, so that a partition may affect the security of the Government revenue, also the bond of union which the village system secures.

In Bengal this latter effect is not felt; but still the breaking up of one compact estate liable to sale as a whole, for the revenue

assessed on it, into a number of petty estates, each separately liable for its fractional assessment, and possessing a very reduced market value in consequence of its small size, has been felt to be a real difficulty. On the other hand, there are interests which benefit by partition. The tenants on a joint estate are often seriously harassed by having to pay their total rent in a number of fractions to different shareholders, each insisting on collecting his own separate payment. A separation of the interests tends to alleviate this[10]. The question, therefore, of regulating partition long remained under discussion. It had been dealt with by Regulations in 1793, 1801, and 1803. In 1807 a limit had been put to the division, and no share assessed with less than Rs. 500 revenue was allowed to be separated. This Regulation, however, was thought to go too far, and was afterwards repealed[1]. The subject has been more recently set at rest by the passing of Bengal Act VIII of 1876.

This Act contemplates only one kind of partition, *i.e.*, the complete separation of the estates, not only as regards the private rights, but as regards the responsibility for the revenue. But no partition made after the date of the Act coming in force (4th October 1876) other than under its provisions, though it may bind the parties, can affect the responsibility for Government revenue. There is a limit, but only a very low one, to partition: if the separate share would bear a revenue not exceeding one rupee, the separation cannot be made, unless the proprietor consents to redeem the land revenue, under the rules for this purpose. Partition can be refused when the result of it would be to break up a compact estate into several estates consisting of scattered parcels of land, and which would, in the opinion of the Collector, endanger the land-revenue[2].

For the procedure of a partition case, how disputes are settled, how the final order is recorded, the Act must be referred to. The proceedings are held "on the revenue side" before the Collector.

[10] This difficulty of fractional payments will be found discussed in Macneile's Memorandum, Chapter XVII.

[1] By Regulation V of 1810.

[2] Bengal Act VIII of 1876, sections 11 to 18.

SECTION V.—RECOVERY OF GOVERNMENT REVENUE.

The simple remedy contemplated by the early Regulations was, that if the revenue was not punctually paid, the estate, or part of it, might be put up for sale. The effect of this law has been noticed in a previous chapter on the permanent settlement.

The present law on the subject is to be found in Act XI of 1859, as amended and amplified by Bengal Acts III of 1862 and VII of 1868, and still more recently by Bengal Act VII of 1880 for the recovery of "Public Demands."

An "arrear" accrues, if the "kist" or instalment of revenue due for any month remains unpaid on the first of the following month. In some cases notice for fifteen days before sale is required, and the later Act enables Government to empower Collectors to issue warning notices in all cases[3].

Sharers of joint estates can protect themselves from their shares being sold for arrears along with the rest of the estate, by applying for and obtaining an order for a "separate revenue account" of their share as I mentioned on a previous page. But if on a sale being notified (subject to the exception of the separate shares), it is found that the estate subject to such exception, will not fetch a price equal to the amount in arrear, then notice is given that, unless the recorded sharers make up the arrears and so save the estate, the whole estate will be sold. I pass over the rules for re-sale in case the auction-purchaser fails to pay the purchase-money in due time, and here only notice that there is an appeal to the Commissioner against a sale in certain cases[4]. The Commissioner may also suspend a sale in cases of hardship, and report to the Board, on whose recommendation the sale may be annulled (after it has taken place) by the local Government. The jurisdiction of the Civil Courts to annul a sale, on a regular suit being brought for the purpose, is also defined[5].

[3] Sale Act XI of 1859, section 5; and Bengal Act VII of 1868, section 6.

[4] See Act VII of 1868, section 2; Act XI of 1859, section 26.

[5] Act XI of 1859, section 33.

As already noticed, a sale for arrears hands the estate over to the purchaser with a clear title: the purchaser may void and annul all leases and subordinate tenures, except those specified in section 37 of the Act XI and those which are protected by registration [6]. "Tenures" or interests like fisheries and other interests arising out of lands not being "estates" (land or shares in land paying revenue) may be sold like estates for arrears of revenue [7].

It should be remembered that in all Government estates, *i.e.*, where the Government is theoretically the proprietor and the cultivators are its tenants, as well as in all cases where money due under any Acts is legally recoverable "as arrears of land revenue," the procedure is under Act VII of 1880. The Collector records a certificate of arrears [8], which certificate has the effect of a decree of Civil Court and may be executed accordingly. A private landlord can only pursue his tenants either under the rent law or the special law applicable to the under-tenures called "patnís."

SECTION VI.—RENT LAW.

It is not possible in the space available to me, nor would it be necessary for the purpose of this Manual, to do more than indicate the outlines of the laws of rent and its recovery. Under the early Regulations no sufficient provision was made for the landlord recovering his rent, and consequently he was frequently unable to pay his revenue, and his estate was sold up. This evil was soon remedied; but the law rather impaired the status of the raiyat. These powers of rent recovery are still remembered as the "qánún haftam" and "qánún panjam" (alluding to Regulations VII of 1799 and V of 1812). Under the former the tenant's person could be seized in default, and under the latter his property could be distrained. Under either case, "the proceedings commenced with what has been described as a strong presumption equivalent

[6] See Act XI, section 38, &c.
[7] Act VII of 1868, section 11.
[8] See Bengal Act VII of 1880, section 5.

to a knock-down blow against the raiyat." The solution of the difficulty did not immediately appear, and it was not till 1859 that the rent law was codified. It is clear that in a country like Bengal, where the proprietary position of the zamíndár is more or less artificial, and where the "tenants" are in a large number, if not in the majority, of cases, the original landowners [9], and would, had the village community survived as in the North-Western Provinces, have themselves become the landlords;—it is obvious under such conditions that a rent law cannot merely occupy itself with a procedure for obtaining a decree for arrears, selling the defaulter's property, and distraining his crops.

It is necessary to determine what classes of tenants the landlord can eject at his pleasure, or at least on the termination of his lease or other agreement, and what tenants are entitled by their antecedents and real position, to be recorded as having "occupancy rights." Then, again, as an occupancy right would be useless if the rents were liable to enhancement solely at the will of the landlord, it becomes necessary to determine what rents are unenhanceable, and on what principles those fairly liable to increase may, from time to time, be raised.

Act X of 1859, the first general rent law (which was not invented in Bengal, but originated in the North-Western Provinces), deals with both branches of the subject. It was the first to announce the general "arithmetical" principle of tenant-right; namely, that every tenant who himself or by his ancestor had held continuous possession (for the then general period of limitation) twelve years, should be declared an occupancy tenant. This principle of an arbitrary but equitable prescription which would serve as a title, may have been no more than just, where the people seeking their rights were the weaker party, down-trodden and ignorant, unable to understand the value of documentary evidence, and to know how to prove ancient andancestral possession.

[9] At any rate, they were resident cultivators, and, according to alleged custom, not liable to ejection.

The Act, besides fixing the rights of occupancy, endeavoured to lay down principles under which the rents of all such occupancy tenants could alone be enhanced. But these, it was soon found, were by no means easy of comprehension, still less so of application.

The case in 1865, known as the Great Rent Case, in which all the fifteen Judges of the High Court gave interesting and learned judgments on the subject, and examined the history of Bengal tenancy generally, though it resulted in a rule accepted by the majority, can hardly be regarded as having afforded a practicable or satisfactory solution of the enhancement question.

The Act X of 1859 was distinguished as regards its method of recovering rents by establishing special suits in *Revenue* Courts and prescribing a special procedure to be followed in such cases. As this procedure is supposed to be easier for the more backward and less "Regulation" districts, the Act is still retained in some places, *e.g.*, in the Orissa districts, in the Darjiling and Jalpaigúri districts[10]. In the other districts[1] it has been superseded by Bengal Act VIII of 1869, which, however, in great part re-enacts Act X, but hands over rent suits entirely to the Civil Courts; and this forms the distinguishing feature of it. The right of occupancy is declared, as before, on the twelve-years' rule. Nor has any alteration been made in the rule of enhancement. There are provisions for immediate and summary execution of decrees for ejectment. Under-tenures may be sold also for arrears of rent[2].

The Act declares the produce of land to be held as hypothecated for the rent; and distraint and sale may be resorted to instead of a suit[3]. But distraint cannot be made for arrears that have been due for more than a year. The crop is liable to distraint even when it has been reaped, if it is still on the ground or on the thresh-

[10] Not in Sontalia, which is under a special Regulation; nor in the districts of Chutiya Nagpúr, which have a special Landlord and Tenant Act of their own (I of 1879).

[1] See Notification in *Calcutta Gazette*, 2nd March 1870.

[2] Act VIII of 1869, section 59; Act X of 1859, section 105; and Bengal Act VIII of 1865, section 4, &c. Patni tenures are still sold under Regulation VIII of 1819 as explained by Act VI of 1853.

[3] Act X of 1859, section 112; Act VIII of 1869, sections 6 to 8.

ing-floor or like place, but not after it has once been stored. Then it becomes ordinary movable property, and can only be taken in execution of a decree just like any other property.

Both Acts agree in keeping up the law which, indeed, has been always a principle recognised in Bengal for the protection of the tenant, *viz.*, that every tenant has a legal right to demand a "pattá" or a written document specifying the extent of his tenure, the terms of rent, and so forth: and every one who gives a pattá can claim a counterpart or kábúliyat[4].

At the time I am writing, a Commission to enquire into the whole subject of rent law has presented its report, and a draft Code revising the rules of enhancement and other matters of the first importance to the tenantry, has been submitted.

It is too early at present to say anything of the draft proposed, since it is uncertain how far it will go in recognising further securities for the "tenant." Public opinion in these matters oscillates slowly; at one time the feeling is in favour of the tenant side, at another it tends back to the landlord's interest. The fate of the proposed legislation will, in the nature of things, be much dependent on the state of public opinion.

Section VII.—Other branches of Revenue duty.

There are other branches of a revenue officer's duty which occupy a considerable space in the Revenue Manuals. The procedure of the Collector as a Court of Wards, managing estates of minors, and the procedure for managing lands attached by order of Court, are instances. It is not within the scope of this Manual to deal with these branches; they are all fully provided for by the Board's Revenue Rules.

Nor can I go into the questions of agricultural embankments[5], the rules for "Taqávi," or advances made for land improvements[6].

[4] Act X of 1859, sections 2 to 9; Act VIII of 1869, sections 2 to 10.

[5] Bengal Act VI of 1873.

[6] Act XXVI of 1871.

The road cess assessment and collection under Bengal Act IX of 1880 forms, in Bengal, another special branch of a revenue officer's duty. In other provinces, as a rule, a cess for the same purposes is assessed along with the land revenue, and is collected at the same time and by the same process. In Bengal, the arrangements of the permanent settlement did not include this, and therefore an Act was required, which makes not only estates, but every kind of tenure and cultivating holding, liable to pay a small contribution to the maintenance of a fund for roads and communications.

The acquisition of lands for public purposes under Act X of 1870 is practically a branch of revenue duty, as it is the Collector who makes the first award of compensation, and as when the land is expropriated the revenue on it has to be remitted, and the "taujih" department is consequently concerned.

Full instructions regarding the form of submitting a proposal to expropriate lands, and other details of procedure, are to be found in the Board's Rules; a reference to these and to the Act X of 1870, will make the whole matter clear. Further detail here is not required[7].

[7] The Waste Land Rules have also a great importance in Bengal, as there are still lands available in the Assam districts, in Cachar, about Darjiling, and in the Sundarbans. An interesting account of the various rules for the disposal of waste lands, their successes, and their defects, will be found in Macneile's Memorandum, pages 106 to 128.

BOOK III.

THE REVENUE SYSTEM AND LAND TENURES OF UPPER INDIA.



THE REVENUE SYSTEM AND LAND TENURES OF UPPER INDIA.

INTRODUCTION.

The Revenue systems of the North-West Provinces, the Panjáb, Oudh, and the Central Provinces bear such a strong family resemblance to one another, having all originated in the same law and its authorised commentaries, that it has been judged best to treat of them together.

The original basis of the whole system is to be found in Regulation VII of 1822, as afterwards modified by Regulation IX of 1833. I will briefly repeat the history of these Regulations, although I have already given it in the fourth chapter of Book I.

The Regulations for the Permanent Settlement applied only to the districts of Bengal proper, but were extended in 1795 to those of the Benares Province. But in the course of time the British Empire expanded: new provinces and districts were acquired by cession or conquest, and required a Revenue Settlement. Among the earliest of these was the Cuttack (Katák) province, acquired in 1803. The Permanent Settlement rules were clearly inapplicable, and a special settlement, or rather series of short settlements, legalised in 1805, were made. In the following years the "ceded" and "conquered" districts, that make up a considerable portion of the North-Western Provinces, were rapidly acquired, and also demanded settlement. All this time experience in Revenue Administration was being gained, and the defects of the Permanent Settlement and the impossibility of its general application, were recognised. Moreover, in 1820, the Minutes of Sir T. Munro, on the raiyatwárí system, had begun to excite interest.

When, therefore, the Katák Settlement of 1805 expired and the other provinces required regular settlement for the first time, a new settlement law was needed; and the subject was approached with views considerably different from those which had prevailed in 1793. The new settlements were, in fact, provided for on an improved basis, and Regulation VII of 1822 embodied the new method. The system so inaugurated met with general approval, and in 1825 Regulation VII was extended to all other districts in the Presidency of Bengal to which the Permanent Settlement had not applied[1]. In 1833 (by Regulation IX) the law was improved in some important particulars; and these Regulations then became the basis of the Revenue system of all Upper India, and afterwards that of the Central Provinces. Around the Regulations themselves were soon collected a valuable body of practical Commentaries, such as the "Sahárunpur Instructions," the "Rules for the Saugor and Nerbudda Territories, 1853," and other Settlement Orders, which find their best known representative in the "Directions for Revenue Officers" by Mr. Thomason[2].

When the Panjáb and (later still) Oudh were annexed, and when the Central Provinces were united into a separate Local Administration, it was determined to settle them on the same principles. Regulation VII of 1822 was not indeed actually put in force[3] in all these provinces, but the Settlement and Revenue Officers were directed to follow its spirit, and Settlement Circulars were issued for their instruction, on the basis of Mr. Thomason's work and the other official papers already alluded to.

The original settlements made under these Regulations have expired, aad the Regulations themselves have been repealed or

[1] And the Regulation is declared by the Laws Act of 1874 to apply to all the Lower Provinces (Bengal) except the Scheduled Districts. Here it is still in force.

[2] This work appeared in 1849. It consists of three parts, (1) Introductory remarks, (2) Directions to Settlement Officers, (3) Directions to Collectors. The work was specially re-edited for the Panjáb by Mr. D. G. Barkley in 1875.

[3] In the Panjáb at least this was doubted; for the Panjáb had never been formally declared part of the Bengal Presidency, and it was to *that* that the Regulation extended.

superseded by the modern "Land Revenue Acts." I have therefore adopted the plan of describing the settlement as it would be under the modern law. The earlier Regular Settlements were made with less elaboration, but still on the same general plan, as regards defining boundaries, survey, making a record of rights, and so forth. The survey has since been developed and perfected; the forms of records have been much improved, and the method of calculating the rate of revenue assessment has, especially in the North-West Provinces, undergone a marked change. But still the modern settlements recognise and preserve the salient features of the original system; and the modern law, though differing in details, still breathes its spirit.

As the system is so much alike in all the provinces, I have, as already remarked, determined to give one general description of it, taking up each branch of settlement work in order as it naturally follows. Where, however, the law or practice in any branch is really different in the several provinces, I have at once cast the rules and practice of each into the form of a separate paragraph relating to the one province only. The land tenures are described in a separate section for each province.

At the end of the chapter, appear two brief appendices which will give an account of the revenue system and land tenures in those parts of each province which are "Scheduled Districts," and not under exactly the same revenue law as the rest.

It is only for the **Panjab** and **North-West Provinces** that these notes are required. In **Oudh** there are no scheduled districts. In the **Central Provinces** the districts of this class are certain remote and wild districts or estates held by Chiefs. In these Chiefships no enquiry has been made into rights in land. The Chief is called on to pay into the Government treasury a certain annual sum or tribute, and he is left to manage his estate and take revenue or rent from the people, according to ancient rule and custom. The ordinary revenue laws do not apply to them, nor is there any revenue system in force. Consequently, they do not require any notice in this Manual.

In the **Panjab** the appendix notices only the Hazára district, as being governed by a special Regulation. There are some other "Scheduled Districts," but as regards settlement and revenue law, they exhibit no different features from the ordinary districts, and require no special description.

For the **North-West Provinces** a few words of explanation as to the districts requiring a separate notice in the appendix may be added.

The Scheduled Districts, which exhibit some exceptional features in their land and revenue systems, include several mountain districts in which large forest tracts have been reserved to Government: they therefore claim a special notice in this Manual.

All the districts called "Scheduled," under Act XIV of 1874, are not exempt from the ordinary revenue law: the three districts of the Jhánsi Division (Jhánsi, Lalitpur, and Jaláún), though scheduled, are, in revenue matters, governed by the same law as the Regulation districts [4].

Kumáon.
Garhwál.
The Tarái district.
The Jaunsar Báwar pargana of Dehra Dún.
Certain tappas of Mirzapur and the tract south of the Kaimúr hill range.

The districts noted in the margin, however, have more or less exceptional rules of revenue management, and peculiarities of land tenure, and so are noticed in the appendix.

[4] As regards the three districts of the Jhánsi division, the present system of district administration virtually dates from 1862, when orders were issued by the Government, North-Western Provinces, assimilating the system to that of the Panjáb and Oudh, *i.e.*, uniting the Civil, Criminal, and Revenue jurisdiction in the Deputy and Assistant Commissioners and Tahsíldárs. These rules were legalised by an Act of 1864, which has been since repealed under the Act XIV of 1874. Now, the districts of the Jhánsi Division have become "scheduled districts" by Notification No. 687A. of 9th November 1877.

The Civil, Criminal, Police, and other organic laws do not differ from what they are in other districts. The Civil Procedure Code also has been extended, with the exception of certain sections.

The settlement was made under the usual North-West system, and the Rent and Revenue Acts are in force. By a reference to section 1 of the Revenue and Rent Acts, it will be seen that the Acts apply to the whole of the North-Western Provinces except certain districts mentioned in schedules appended to them. These schedules exempt all scheduled districts (Act XIV of 1874) *except* Jhánsi, Lalitpur, and Jaláún.

I should take the opportunity of remarking that the districts of the "Benares Province[5]," which were permanently settled in 1795, require no special notice. All that has been said of the Permanent Settlement in the preceding Book (II) applies to them. They have now been surveyed and records made for them, and except in the one fact that the assessment is permanent, they do not differ from any other "Regulation" district in the North-West Provinces. The Land Revenue and Rent Acts apply to them as well as to the districts not permanently settled.

The subjects of this Third Book will be divided as follows:—

CHAPTER I.—*The Procedure of Settlement.*

CHAPTER II.—*The Land Tenures.*

Section 1.—North-West Provinces.
" 2.—Oudh.
" 3.—Panjáb.
" 4.—The Central Provinces.

CHAPTER III.—*The Revenue Business, Officials, Courts, and Procedure.*

APPENDIX.—*Note A.*—On the Scheduled Districts of the North-West Provinces.

Note B.—On the Hazára District in the Panjáb.

[5] Benares, part of Mirzapur, part of Azimgarh, Ghazípur, and Jaunpur acquired by treaty in 1775 from the Nawáb of Oudh. They were at first left in the hands of the Rája, who paid a fixed revenue or tribute to Government. Some further changes occurred in 1781, and the districts were finally brought under the Regulations and permanently settled in 1795. I mention this because, in different books and reports, I have found all the three dates which I have included, respectively given as the date of annexation. There is no doubt that the treaty of 1775 gives the real date of the province actually becoming British territory.

CHAPTER I.—THE PROCEDURE OF SETTLEMENT[6].

The term "Settlement[7]" will already convey a definite meaning to those who have read the introductory sketch in Book I. Under the system which we are to study, it is the operation by which Government, through a properly appointed staff of officials, ascertains the amount of "Revenue" it is to take from the land, and determines the persons who are to be allowed to engage for the payment of the revenue, and who consequently are vested with the proprietary title in the land itself. As the determination of this proprietary title gives rise to further questions regarding various classes of persons interested in, or connected with, the land, it is an essential feature of the Upper Indian Settlement, that an enquiry into these rights should be held, and a subsequent authoritative record of them made. All customs and local practices affecting the payment of revenue, and the management of the "estate," are also recorded.

Hence a settlement involves proceedings which are partly *judicial* and partly *fiscal*.

The progress of a settlement indicates a series of subjects, to be described in the order in which they naturally occur in actual

[6] The chief authorities referred to are the following, and their full title has not been repeated in each reference:—

North-West Provinces.—Circular Orders of the Sudder Board of Revenue (= S. B. Cir.); the Revenue Act XIX of 1873; Colvin's Settlement Manual, 1868; Thomason's Directions to Revenue Officers, and Colvin's Memorandum on the Revision of Settlements, North-West Provinces: Rent Act XII of 1881.

Oudh.—Major Erskine's Digest of Settlement Circulars, 1871 (= Digest), and the Government Circulars of later date; the Revenue Act XVII of 1876; Rent Act XIX of 1868.

Panjáb.—Panjáb edition of Thomason's Directions, 1875; Land Revenue Act XXXIII of 1871; Rules made under the Act (= Rules); Tupper's Panjáb Customary Law, III vols., Calcutta, 1881 (Government Press).

Central Provinces.—Settlement Code of 1863; Nicholls' Digest of Circulars; Land Revenue Act XVIII of 1881.

The numerous Settlement Reports in each province are referred to throughout; also Mr. Stack's Memorandum on Current Temporary Revenue Settlements, prepared for the Government of India, and printed in the Home, Agriculture, and Revenue Department Press, 1880.

[7] "Settlement" is sometimes used in a more restricted sense to mean simply the engagement or contract to pay a certain sum of revenue, as when we say "so and so has accepted a settlement for so much."

practice. These subjects I have made the headings of the sections of this chapter : they are as follows—

Section 1.—The procedure by which a settlement is set in operation.
" 2.—Demarcation of village boundaries.
" 3.—The survey.
" 4.—The inspection of village lands and assessment of the revenue.
" 5.—The close of the settlement.
" 6.—The permanent records prepared at settlement.

SECTION 1.—OF THE PROCEDURE PRELIMINARY TO SETTLEMENT.

§ 1.—*How a settlement is set in operation.*

A settlement, or such part of the proceedings of a settlement as may be necessary, is in all cases set in operation by a notification in the official Gazette, which specifies the district or other local area.

North-West Provinces.—In these provinces, where all districts had already been settled, some of them more than once, before the existing Revenue law, Act XIX of 1873, came into force, nothing more is prescribed[8] than that the notification should place the area generally "under settlement," or declare that a "record of rights" only is to be prepared. It might be the case, that the record of rights in a permanently-settled district required preparation or reconstruction; it is therefore convenient that the Government should be empowered to prepare such a record, though there is no question of altering the assessment.

Oudh.—Under the Revenue Act (XVII of 1876), the provisions are practically the same[9], namely, that where the whole series of operations comprised in a settlement is not required, power is given to prepare a "Settlement Record" even though a complete settlement involving a new assessment is not contemplated. Under the Oudh Act this "Settlement Record" is at the discretion of

[8] Act XIX of 1873, section 36.
[9] Act XVII of 1876, section 14.

Government as to what papers (registers, statements, &c.) it is to consist of, and what facts it is to record. Both Acts direct the appointment of Settlement Officers and Assistant Settlement Officers who will exercise the powers conferred by, or conferable under, the Acts.

Panjab.—As this province had been but a short time under British rule, and, when the Revenue Act (XXXIII of 1871) was passed, a number of districts had still to be settled in regular form for the first time, the subject is dealt with more at large. It is explained[10] that a district may be "under settlement" either for the purpose of assessing the revenue, or for enquiring into and recording the rights of persons interested in the land, or both.

Section 10 explains further that when there has been a provisional adjustment of the revenue only (as there usually was when we first took charge of a district), that is called a "Summary Settlement;" when, however, there was afterwards a complete settlement, consisting *both* of an assessment of revenue and a record of rights, that is called a "First Regular Settlement."

A "re-settlement" is (as naturally follows) when either or both of those portions of a regular settlement are revised or gone over again, on the expiry of the previous term.

The "settlement notification" defining the local area (as in the other provinces) declares further which of the above described settlements is ordered, or what portion of the operations of a settlement is to be carried out, and what officers are to do the work. It is usually accompanied by a notification investing the Settlement Officers with Civil Court powers, as will be afterwards explained.

Central Provinces.—The law provides for a notification indicating the local area to be settled, and simply adds that the Chief Commissioner is to specify what operations are to be carried out[1]. The Settlement Officers are then appointed as the Act directs.

[10] Act XXXIII of 1871, sections 7-13.

[1] Act XVIII of 1881, section 28. A "revenue *survey*" can be ordered by notification at any time, independently of a settlement (section 27).

§ 2.—*Settlement Officers.*

In all provinces the officer in charge is called the Settlement Officer, and there may be Assistant Settlement Officers. There are also subordinate officers who may be locally known by different titles, but they carry out a great deal of the detailed work, subject to revision by the Settlement Officer. The Acts always provide for the investiture, by the Local Government, of any person employed in this way with such powers as may be necessary. In the Panjáb we have "Superintendents" (who are often Extra Assistant Commissioners) and Deputy Superintendents of Settlement. The same title is, or was, in use in the Central Provinces[1].

The Commissioners, and finally the Board of Revenue, control Settlement Officers in the **North-West Provinces. In Oudh** the Chief Commissioner is the controlling authority. In the **Panjab** there is a Settlement Commissioner, who controls all or certain settlements as may be appointed, with final reference to the Financial Commissioner. In the **Central Provinces** there is also provision for a Settlement Commissioner[2].

It will be borne in mind, as regards the group of provinces generally, that in a number of districts, the regular settlement is now a thing done and past, and the *whole* work will not (if the records are properly kept up from year to year) have to be gone over again; the boundaries are all ascertained, and the surveys made, so that much of what we describe in this chapter will be descriptive rather of what *has been* the procedure, than of what *has to be*, in any future settlement, gone through. Nevertheless, there may be re-settlements and revisions of records, or altogether new settlements, in which the procedure will still have to be followed in some or all of its branches.

[1] In the Central Provinces Act (XVIII of 1381, section 29) all the officers appointed to the work are called Settlement Officers; if more than one is appointed, there is to be one to whom the rest are subordinate, and he is called the Chief Settlement Officer.

[2] Act XVIII of 1881, section 32. In the Panjáb the appointment is not provided by any special enactment.

SECTION II.—DETERMINATION OF BOUNDARIES.

§ 3.—*Boundaries of districts and tahsils not a settlement matter.*

The boundaries of districts and revenue or fiscal sub-divisions are, of course, public matters and do not affect any private right; they are determined by Government under the powers vested in it by law [4].

§ 4.—*Village and field boundaries.*

Not so the boundaries of mauzas or villages, or the boundaries between one man's field and another. As the object is both to assess revenue on definite areas, and to secure all classes of rights which also subsist on lands also of definite area, it is evident that a survey and registration of lands is a necessary preliminary (supposing such not already to exist) for a settlement. But before any survey can be made, all boundary disputes must be settled, or, at least, it must definitely be known that such and such a line is in dispute, so that it may afterwards be put in correctly when determined by proper authority. The village boundaries are first settled before the revenue survey begins, and then other boundaries may be settled if necessary, when the field-to-field survey comes on. But such disputes are generally of a different kind to village boundary cases, and usually depend on some claim to right which is settled by a land case in Court.

[4] Act XXI of 1836 (for Bengal, North-West Provinces, and Panjáb) gives power to create new zilas or districts; Act XIX of 1873, section 14, provides for sub-divisions in the North-West Provinces; Act VI of 1867 provides also for altering boundaries of districts in the Panjáb, but no mention is made of the sub-division of districts. This matter is settled under Financial Commissioner's B. Circular XXV of 1864 (Barkley's "Directions," § 43, p. 16). Act XVIII of 1876 (Oudh), section 45, provides fully for the whole subject,—districts, sub-divisions, &c. Central Provinces Act XVIII of 1881, section 14, also provides fully for abolishing districts and tahsils or creating new ones, and altering the limit of those now existing.

For purposes of Civil and Criminal jurisdiction, the Procedure Codes contain provisions which apply to all districts to which the Codes apply.

The Revenue Acts contemplate this[5]. The Settlement Officer is empowered by all the Acts to call upon proprietors to restore or erect boundary marks. A boundary dispute is distinguishable from a dispute about a right to land: two persons may, for example, be in possession, generally, of contiguous lands, but may be in doubt as to the precise line of demarcation between their respective possessions. If one party shows that, rightly or wrongly, his possession extends to a certain point, that is the boundary line according to possession. A question of right, that the boundary ought to go in some other direction, is a question for a civil suit, unless the law enables it to be decided by arbitration.

§ 5.—*Question of possession.*

In the "Directions" it is said that possession can never be unknown, but, remarks Mr. Auckland Colvin[6], it is sometimes difficult to discover :—

"A field is often entered during successive years in the *jamabandi* of both disputing villages; the crop grown, the amount thereof, the name of the owner and cultivator, are elaborately recorded. Inquiry on the spot and from neighbouring zamíndárs by no means always clears the matter. These are often either indirectly interested or ignorant. It is well in such cases carefully to examine the *rosnamcha* and *bhykhatta* (bahi kháta) of the patwáris concerned and to ascertain in which patwári's papers entries regarding the field in question are most frequent. These papers are less open to suspicion than the *jamabandi*, as reference to them is less looked for."

In waste or uncultivated land, disputes are more likely to arise. Here reference must be had to former maps prepared by authority. These may not always be forthcoming, or there may be reason to doubt their accuracy; then there must be a recourse to arbitration or to a civil suit.

§ 6.—*Settlement of disputes.*

By the Oudh and North-West Provinces Acts, the Settlement Officer may settle boundary disputes, but is bound to decide on the

[5] North-West Provinces Act XIX of 1873, section 40; Oudh Act XVII of 1876, section 23; Panjáb Act XXXIII of 1871, section 22; Central Provinces Act, section 45.

[6] Settlement Manual, 1868, p. 4, s. 6.

basis of possession, or refer the matter to arbitration[7] for decision on the merits. In the Panjáb Act it is not expressly said what is to be done in case the boundary is disputed, but section 23 authorises the Settlement Officer (if empowered by the Local Government) to refer *any* matter in dispute to arbitrators with or without consent. Nor does the Panjáb Act say that a disputed boundary (when not submitted to arbitration) is to be settled on the basis of possession as it does in the other Acts; but there is no doubt that it has been the practice to do so; a person distinctly out of possession must go to the Civil Court and establish his right. The Central Provinces Act does not specifically allude to boundary disputes; but sections 68, 69, 72, all give power, in regard to different classes of land, to ascertain the persons in possession.

In cases in which possession or boundary questions can be decided by arbitration, the Act empowers the Local Government in the Panjáb to prescribe the powers and procedure of arbitrators. In the North-Western Provinces and Oudh, these matters are noted in the Revenue Act itself. The Central Provinces Act does not specifically allude to arbitration; but section 19 gives power to make rules and to extend the provisions of the Civil Procedure Code, under which arbitration can be applied and regulated.

I have only here spoken of the powers in determining boundaries, which Settlement Officers have as such. But under the Central Provinces, Oudh, and Panjáb laws, Settlement Officers may be invested with judicial powers as Civil Courts, to hear land cases. Their powers in this respect will be more conveniently noticed at a later stage.

Assuming such powers to have been given, it practically comes to this: that the demarcation is first of all to be done by the people themselves; they put up the necessary marks; if they do not, the Settlement Officers have power to do this and charge the cost on the parties concerned. In some cases this cannot be done, owing to a

[7] In the North-West Provinces consent of parties is not necessary to a reference, if the reference is ordered by the Settlement Officer (section 220). It *is* in Oudh (section 191). Where possession cannot be made out, and where arbitration is not resorted to, the only remedy is a regular civil suit.

dispute. In the North-Western Provinces and Oudh the Settlement Officer can only summarily decide on the basis of possession (unless arbitration is resorted to), leaving the parties to decide the question of right in the Civil Court. In the other provinces, the dispute being known, the Settlement Officers may decide the whole case, acting under their Civil Court powers.

These remarks only apply to the adjustment of boundaries during a settlement. In case of a disputed boundary occurring afterwards, it would be decided under the ordinary law.

§ 7.—*Thákbast.*

It was the uniform practice, in demarcating village boundaries at settlement, to identify important points, such as the junction of the boundaries of three or more villages, by masonry pillars ("trehaddi" or in the Persian form "sih-haddi") different in form from other pillars or marks[8]. Wherever there had been a dispute, a continuous trench was dug, or more than usually conspicuous and permanent marks were set up. Charcoal and other substances were often buried under the pillars, so that, even if the superstructure is destroyed, the site of the pillars may be easily determinable. In most other cases earthen or mud pillars are sufficient and are generally used.

In cases where there had been no previous regular settlement, or where new maps had to be prepared, a "thákbast naksha," or boundary map, was prepared for each village[9]; and with it there was also drawn up a formal record[10] showing the manner in which the boundary lines were ascertained, and the proceedings in connection with the decision.

The procedure for the repairs and maintenance of boundary marks at all times, *i.e.*, after the settlement is over, will be found in the chapter on "Revenue business."

[8] See Directions (Panjáb edition), page 5, §§ 13–15; (North-West Provinces), S. B. Cir. Dep., ‡ p. 1.

[9] (Panjáb) Rules, head C., Section III, p. 52.

[10] *Id.*

§ 8.—*Demarcation in Oudh.*

In **Oudh** the demarcation of boundaries was so important that the Settlement Circulars treat "demarcation" as a distinct branch of work. There was also a special staff employed at the settlements for it. The work was done by amíns and munsarims, supervised by a "sadr munsarim," who remained with the demarcation officer[1]. As the Revenue Survey only dealt with exterior boundaries of villages, only these were shown in the maps, but supplemental maps of interior divisions were made for the use of the Settlement Officer and for the native staff who made the khasra or "field-to-field" survey.

One difficulty in Oudh (especially in the eastern districts) resulted from the way in which the lands belonging to one estate (held by a separate and jointly responsible body) were interlaced with the lands belonging to other groups. The cause of this has been stated in the introductory chapter on Tenures. When a number of villages belonged to certain "zamíndárí" joint families and came under division, the plan was for each branch to get, not an entire village, but a certain slice of each village in the joint estate. When, therefore, a separate settlement had to be made for the several estates divided off, the lands which had to be assessed together as one mahál, lay some in one village, some in another. When the location of lands in an estate is thus scattered, it is said to be "khetbat." When the division is into compact blocks, it is said to be "pattibat[2]." When the lands are khetbat, you may find an estate (*a*) with some of its lands in each of several villages; (*b*) consisting of one or more villages as a whole, but some lands of another estate included in the villages; (*c*) consisting of one or more entire villages, but with some outlying lands in other villages.

Such internal divisions are very important, because the revenue is not, under the system we are studying, assessed on each field separately, or on a group of fields, merely because they lie close

[1] Erskine's Digest, section II, §§ 20–22.

[2] The same thing occasionally occurs in the North-Western Provinces, and is spoken of as the qitu'bat and khetbat distribution respectively.

together; but on a mahál or estate owned on the same title, by the same individual or body. The internal divisions of villages were accordingly mapped for the use of the Settlement Officer, and demarcated by pillars of a particular form to distinguish them from the village boundary pillars[3]. When a tract was ready, the thák-bast maps were made over to the survey, and the "misls" (files of proceedings) relating to the boundaries made up.

The boundaries of waste lands attached to, or separated from, villages were indicated by a continuous ridge[4] ("mend").

§ 9.—*Waste land included in boundaries.*

This is a convenient place to notice a subject of considerable practical importance. I allude to the question how far waste and jungle land, *included* in the local area of a village, was held at settlement to *belong to the* estate.

In all the provinces there have been large tracts of waste, hilly country covered with forest, "bár lands" (as they are called) in the centre of the Panjáb "doábs[5]," and similar unoccupied lands, which have not come under the operation of the settlement at all, but remain to be disposed of by Government. Putting aside, however, these extensive wastes, there are many districts in which the whole area came under settlement, although the actually cultivated lands were limited and separated from one another by intervening tracts (of greater or less extent) of forest, jungle, barren land, grass land, or other description of "waste." In many cases this waste was known by the local name of one or other of the "mauzas" or villages adjoining it. And the question arises—what has been the rule? Was all such waste included in the boundaries

[3] Digest, section II, § 44.

[4] Digest, section II, § 10.

[5] The country between any two of the Panjáb rivers is called do-áb—*i.e.*, "between two rivers," *e.g.*, the Bári-Doáb is the country between the Beás and Rávi, the Rechnáb Doáb between the Rávi and Chenáb, and so forth. The lands in the middle portion of the more extensive doábs being of higher level and far removed from the effect of river percolation, are usually covered with jungle, useful for yielding firewood, and affording grazing to large herds of cattle, and such central tracts are distinguished as the "bár."

of the village whose name it bore? And, if so included, did it become the property of the village, *i.e.*, had the village proprietors the same right to it as they had to the cultivated or possessed area?

The answer to this question must be given differently for the different provinces, and I shall therefore treat of each in a separate paragraph.

§ 10.—*Waste land in the North-West Provinces.*

In these provinces, some of the districts in which there are large forest areas (Kumáon, Jaunsar-Báwar) are under a separate procedure, and will be described in the appendix.

In the ordinary "Regulation Districts[6]" (subject to the ordinary Revenue law), the cases where large areas of waste land would remain, and be excluded from settlement operations, were few; and it may be said generally (any local exceptions are always well known and can be easily ascertained) that the waste was included in the boundaries of the village or of the estate. What follows from this? The Act[7] decides that such waste belongs (at least in a manner) to the owner of the "mahál" or estate within which it has been included. It is therefore not available as Government waste (*e. g.*) for forest purposes. If, however, it is in excess of the requirements of the owners, "with reference to pastoral or agricultural purposes," the Settlement Officer may lay a separate

[6] The Dehra Dún must be considered a regulation district at any rate, now that Act XIV of 1874 is law and makes no mention of Dehra Dún. At the first settlement, however, all the waste was excluded (see Commissioner's letter No. 654, Dehra Dún Settlement Report, 1871). It was then determined to declare all the waste to belong to Government. But this was doubtfully legal. Ultimately, it was decided to give back all the waste that fairly adjoined and might be held to belong to the villages, and only retain for Government the large waste tracts, sál forests and hill jungles which clearly had not been occupied by any village or private landholder.

[7] See Act XIX of 1873, sections 57-60. This is a very curious provision; it has come down from old times, and shows how little our earlier administrators cared for the theory of a thing as long as a practicable rule was arrived at. It seems as if the "surplus" waste *was* the estate-holder's property, and yet it was *not*. It is so far Government's that Government judges whether the owner requires it or not; and if it thinks not, assesses it as a separate estate and offers it to some one to hold; it is so far the estate-holder's, that it must be offered to him in the first instance, and if he does not take it, he gets "málikána,"—a sort of compensation for his lost right.

assessment on it and offer it to the owner of the mahál. If he will not have it, the tract so separately assessed becomes a separate mahál, and at disposal of Government. But the owner of the mahál is entitled to receive an allowance of not less than 5 or more than 10 per cent. "on the net revenue realised by Government from such waste land."

Waste land which has not been "judicially declared" to be part of the estate, nor included in the boundaries of an estate at any previous settlement, is treated differently[8]. It is marked off, and a proclamation is issued for claims. If no claim is made, or being made, is disallowed, the waste is decided to be the property of Government; but *still* an opportunity is given to the owner of the adjoining estate to show that "he has enjoyed *the use* of such lands for pastoral or agricultural purposes. If this is established, the Settlement Officer *may* assign to such estate so much of the waste as he considers "requisite for such purposes," and he *shall* mark off the rest for Government[9].

§ 11.—*Waste land in the Panjáb.*

The case here is somewhat different. In many districts the area for settlement practically consisted of a great waste with villages scattered over it. This condition was, at all events, sufficiently common to cause a rule to be promulgated (by circular order) on the subject of how far the waste was to be considered as belonging to the different villages. The rule was, that each village was to have a certain area of waste included in its boundaries and given over to it absolutely. Where the waste was extensive, it was a rule to allow each village twice, and in some cases thrice, the cultivated area. The rest then formed the "rakh" of the Panjáb,

[8] Act XIX of 1873, section 60.

[9] It will be observed that this indirectly, but clearly, condemns the erroneous doctrine that a person can acquire a *complete property* in the soil itself by merely exercising some *rights of user* over its produce. The section asserts the right of Government in the soil, and buys off the rights of user, by giving up a portion of the land and leaving the rest free for Government; this is *something* like the French method of "cantonnement" in buying out rights of user.

which is Government waste available for forest or any other public purpose, or for sale or grant.

This procedure was not, however, uniformly carried out; there were many districts in which the older settlements left the matter very much in doubt[10]. The Revenue Act consequently draws a dis-

[10] *e.g.*, the Muzaffargarh District, where at first all the waste was included as belonging to one village or the other; this was (somewhat arbitarily) taken back again about 1860, and now finally has been re-settled on a more satisfactory basis with the consent of all parties.

In Ráwalpindi also the waste was not separated from the villages in the hill tahsils of Murree and Kahúta, and the work of separation is only now going on; there were indeed certain tracts of jungle known by local names and which were acknowledged to be generally Government waste, subject to certain rights of user; but it was entirely uncertain what land was part of the village and what was not.

In the Kangra District, but not in Kulu Sub-division, at settlement, all the waste was given over to the villages, but the Government retained a right to the trees, and consequently to the user of the land as long as any trees were on it, and rules were also made for the protection and reproduction of trees.

The following extract (paragraphs 24, 25, and 26) from the remarks of the Financial Commissioner, Panjáb, on Mr. Lyall's Kangra Report (1865-72) are of importance as showing how the waste rights grew up, and how they came to be as at present recognised:—

"When we look to Mr. Barnes' Settlement Report for an account of the mode in which the waste was treated at the Regular Settlement, we find considerable indistinctness:—

"1. Mr. Barnes says that 'extensive wastes and forests are generally considered the undivided property of Government. From this it would appear as if he reckoned small wastes to belong to the landholders.

"2. He treated the holders of land within the circuits as coparcenary bodies, and imposed upon them a joint responsibility to which they were strangers, and to balance this, gave the community the right to collect certain items of miscellaneous rent, the produce of the waste.

"3. In the village administration papers of the Regular Settlement the waste is usually termed 'common land of the village' (shámilát deh); sometimes this definition is omitted, and then the ownership of the waste is left to be inferred from the interests recorded in it.

"4. The question of demarcating large tracts of forest for Government was discussed during the operations of Mr. Barnes' Settlement, but abandoned apparently from the idea that a forest establishment would be expensive, and that the expense might be obviated by employing the zamindárs in the work of conservancy, and ultimately every particle of waste, from the tops of mountains to the river-beds, was included in the boundaries of the circuits.

"To what extent Mr. Barnes intended to convey proprietary right in the wastes to the landholders is even now uncertain. The wastes were demarcated in village

tinction between[1] settlements made before the Act (*i.e.*, before 1st January 1872) and after it.

In those early settlements there may be distinct mention of the matter in the settlement papers; if so, that is of course to be followed: otherwise waste and forest land is presumed to belong to Government, whether included in the boundary of an estate or not. Any claimant may, however, remove the presumption, by offering evidence on certain points which are described in section 28, and need not be further alluded to here.

In settlements made *after* January 1st 1872, unless the records make a distinct provision on the subject, waste included in the boundaries is "deemed" (*i.e.*, conclusively held, as between

boundaries and entered in the administration papers as 'shámilát deh,' but at the same time the right of Government to all trees growing on common land is secured, and the grazing fees payable by the gaddís were claimed for Government. Again, the expression that the extensive wastes and forests are generally considered the undivided property of Government, seemed to show that Mr. Barnes did not intend entirely to abandon these wastes. Further, in two subsequent letters written in 1860, Mr. Barnes distinctly combated the notion of his having surrendered the proprietary right of Government, asserting that the administration papers were compiled by the people themselves, and that custom was against their claim to the proprietary right. Mr. Lyall uses a somewhat similar argument when he says that the entry of 'shámilát deh' against the wastes was made as a matter of course by the amíns, who, trained in the North-West Provinces Settlements, had recourse to the procedure there learnt, by which every plot of land, not being private property, came under the heading of 'common.'

"The question, however, came up for discussion in 1852-53, in connection with the demand for land for forming tea plantations. Mr. Lyall shows that on several occasions the local officers tried to re-assert the paramount claim of Government to the waste, but the Chief Commissioner refused to acknowledge the principle, and ruled that the waste lands must be held to be the property of the villages, and that no lands could be appropriated without the consent of the zamíndárs. This decision was finally affirmed by Government in 1863, and Major Lake, then Commissioner of the Division, recommended that the boundaries of hamlets within mauzas should be defined in the rest of Kangra proper, as they had been at first Settlement in a great part of Tahsil Nadaun. The position thus taken up, which must be held to represent the views of Government when Mr. Lyall began his settlement, was that the Government has reserved in the waste lands only the right to certain forest timber and to certain grazing fees, and had surrendered to the zamíndárs the right in the soil, together with the miscellaneous dues, composed of fees levied from Gújar herdsmen, quarriers, iron-smelters, netters of falcons, owners of water-mills, &c."

[1] Act XXXIII of 1871, section 28, &c.

Government and the parties) to belong to the village[2]. It is never difficult in the Panjáb to ascertain the legal position of the waste,—in any district where there is any (in Ambála, Lúdiána, and some others, there is none to speak of),—for whenever there is any peculiarity, as in Ráwalpindi, Kangra, or the Salt Range, full notice of the subject is sure to be found in the Settlement Reports.

In all cases where there is no question about the waste belonging to the village, *but* where that waste is more than they actually want, the Act contains provisions for separately assessing it, very like those of the North-West law.

§ 12.—*Waste land in Oudh.*

"Waste lands[3] have been declared, generally, to be the property of the State; but it has been ruled that small tracts of waste that supply fuel and pasturage to the neighbouring villages, or are

[2] All waste in the Panjáb that has been dealt with at settlement, and has been cut off from villages, and in which rights have not specially been recorded, is exclusively Government property and available for forest purposes or otherwise; but there has been a strong tendency of late to recognise the *convenience* of the neighbouring villages irrespective of their actual *right*. The result of our settled and peaceful Government has been, that the land originally made over to the villages as waste has become valuable, and it has, in many instances, been all brought under cultivation without thought as to provision for grazing. In consequence of this the people have no waste left, whereon to graze or cut firewood: and they naturally clamour to get it in the neighbouring Government waste. Whenever, then, it is desired to enclose this for planting or other purposes, there is a loud outcry; and this may result some day in serious difficulty. A difficulty of this sort was experienced in the "Rakhs" of the Salt Range (Jhelam District.) Here the waste was all marked off separately from the villages, as it would have been anywhere else, only it was understood that the tracts so marked off were rather taken under care for the general benefit and to prevent the different tribes disputing about them, than to become the property of Government or liable to any strict control. A forest settlement has accordingly revised these arrangements and allotted a certain portion only to strict reservation. Meanwhile, there is in the Panjáb Laws Act (IV of 1872, section 48) an excellent provision which enables Government to make rules regulating the use of pasturage and other products of Government waste generally, and prohibiting any user that is not in accordance with such rules. This provision is exceedingly valuable, pending the introduction of a complete forest reservation or other final disposal of the lands.

[3] Quoted from the Digest, section II, § 63.

in the course of being cultivated by neighbouring villages, are to be included" in the village boundaries.

The object here, as elsewhere, was to give, in addition to the culturable land, room for extension of tillage, and to provide for pasture land: and the rule was, when possible, to allow the village an extent of waste equal to the area already cultivated. If, after making this arrangement, the surplus would not exceed 500 acres, it was not demarcated, but redistributed and included in the villages. The waste in excess of this would usually be free of all rights and available for any Government purpose.

Whenever a State forest is demarcated, a belt of waste land has to be left between the village boundary and the forest, so that the village may have no excuse for cattle-trespass within the actual forest limits. As this arrangement of waste was provided at the first settlements and acted on then, there was no occasion for any provision of law in the Revenue Act, as we have seen there was in the Panjáb.

In cases where Government wastes adjoin private estates, the Government paid half the cost of the ordinary boundary-marks and one-third of triple junction pillars [4].

§ 13.—*Waste in the Central Provinces.*

There are in these provinces, to a greater extent than elsewhere, large areas of jungle country in the hill ranges and in several of the plain districts. Such areas were from the first excluded from the scope of the settlement, and remained at the disposal of Government, and have now to a great extent been constituted permanent Forest Estates, called in India "Reserved Forests." But, just as in the other provinces, there were also waste areas which intervened between the occupied lands of villages under settlement.

The Government right to deal with these was all along asserted; and it was never considered that, because the waste happened to be called by the same name as the mauza, it is therefore the

[4] Quoted from the Digest, section II, § 70.

property of that mauza. But a rule was devised (as in the Panjáb) to give a reasonable share of waste to the village and to retain the rest. The Central Provinces rule was[5] that an area equal to 100 per cent. as a minimum, or of 200 per cent. as a maximum, on the area of cultivated land, was to be given up and included in the estate.

In some districts the *survey* had been made so as to show the whole of the waste as in some mauza or other (*e.g.*, the Nágpur district). Where this had been done, the excess waste under the new rule, was to be marked off, and either new boundary maps prepared for the settlement records or the old ones altered[6]. The waste might be locally known by the name of a mauza, but it was a separate Government block. These blocks were free of all rights[7].

There would, however, be cases where a jungle tract came under settlement, because small holdings or scattered villages were found in it. Here you could not speak of waste being attached to villages; it was a case of small hamlets found inside the waste. In such cases to have applied the rule would have been to increase the village only to a very small plot. And there were cases also where the cultivation shifted, a plot being cultivated one year and abandoned the next in favour of a new plot.

The decision in the matter is important, and I may, therefore, quote *verbatim* the digest of the Circular LXXII of 1862[8] :—"But these are . . . . the instances where we should be especially careful to adhere to the principles adopted, of 'not relinquishing large areas of forests and waste to individuals incapable and unwilling to reclaim them.' Accordingly, when a Settlement Officer meets with a village, represented, say, by a few Gond huts, and a

[5] See Nicholls' Digest of Circular Orders, Volume II, Section XX, page 595, where the whole subject is clearly treated.

[6] Where this would have been very inconvenient the waste separated off was allowed to be shown as a "chak" or part of a mauza, belonging to Government.

[7] I do not of course speak of concessions which may have been allowed, or to such special rights as were granted in the Bálághát district to certain settlers, who in fact, contract to pay their revenue on the understanding that they are to get free jungle produce for their own use, and free grazing from the waste (which is now "Reserved Forest" under the Forest Law).

[8] Digest, volume II, page 596, &c.

few acres of cultivation, in the depths of a forest extending over several square miles, more or less of hill and dale, he must not relinquish the proprietary right on the whole forest, because, from the circumstances above instanced, and others similar to them, he cannot exactly decide on the rule by which the right should be confined to closer limits. It must be remembered that, although Government is willing to recognise proprietary right on the basis of possession, yet possessed land is defined as a rule to be cultivation, *plus*, on the maximum scale, 200 per cent. of uncultivated land; and that there is no authority for granting proprietary rights on other grounds.

"There appear to be two ways of settling such cases:—

"Firstly, offer to recognise the proprietary right in the cultivation, *plus* an appropriate amount of uncultivated land; if the cultivation be scattered, act similarly, arranging the scattered portions as chaks or outlying plots of the main portion, and exclude the remainder. Secondly, if this is objected to, because the cultivation shifts its locality, or on other grounds, there seems to be no alternative but to reserve the superior proprietary right. Frame the assessment as if the excess of waste were excluded; guarantee possession to the landholders as inferior proprietors or tenants, but reserve the power to include the grant of the superiority of the land in their possession, in the grant of any portion of the excessive waste adjacent, which may, at any future time, be made to a third party; providing, however, at the same time, that they, the existing landholders, or their heirs, shall have the offer, which they now refuse, again made to them before any such grant be concluded."

I notice that this was done in the Upper Godávari district[9].

Something has been done to prevent injury to the country by the wasteful treatment of forest lands included as waste in the village estates. By the terms of the "wájib-ul-'arz," rules for protection

[9] Settlement Report, section 201. I presume that the inferior proprietary right would be given in the lands found actually in possession at the time. Hitherto the cultivation had shifted on the "bewar" (often called dahyá) principle from place to place.

are agreed upon. Certain valuable trees are not to be cut without a reference to the Tahsildár. Where poles of sál, shísham (*D. latifolia*), and teak are cut, one such of good growth is to be left on each 100 square yards. Mohwa trees (*Bassia latifolia*) are to be respected. Subject to these rules, clearing for *boná fide* cultivation is not to be checked[10]. These rules being by agreement, there was originally no specific penalty for their breach, but "vigilant care on the part of the District Officer and Tahsildárs should suffice to ensure a general adherence to them." It would now seem that, under the new Revenue Act, a penalty can be enforced, for such rules are expressly alluded to in section 141 (*f*). And the Act provides in section 162, that a penalty for breach of rules, made (with the sanction of the Governor General in Council) to carry out the provisions of the Act, may be exacted.

The allotment of the waste having been already accomplished under the rules laid down, all that was required in the Revenue Act[1] was to provide that if, in the course of any Settlement, there appear tracts of land which have no owner (*i.e.*, which do not appear to be lawfully owned or to have been definitely and properly included in a mahál or estate under the arrangements which I have described), a notification should be issued inviting claims. If it is found that some persons had enjoyed certain rights, but never had exclusive proprietary possession, then a portion of land may be given to the claimant (or some other form of compensation), so as to get rid of his rights over the rest. This is very nearly the same as the North-West Provinces law.

In the large zamíndáris, which are a sort of semi-independent chiefships, the rules about excess waste have not been applied, and it is not intended to check the extension of cultivation in any way, even though some valuable trees may be on the ground. This clearing must not, however, be made a *pretext* for *selling valuable forests*.

[10] See Nicholls' Digest, Vol. I, page 185.

[1] Act XVIII of 1881, sections 40–42.

For the Chánda Chiefs the Government terms and rules of the tenure, provide a certain protection for the forest[2], the chief feature of which is that more than a certain number of trees cannot be cut and sold without the Deputy Commissioner's sanction. The case of smaller estates is not so clear,—in the Circular LXXII, already quoted, it is said that claims to "manorial rights" (presumably meaning rights in the waste) are to be carefully considered and reported on. I conclude that in most cases the waste lands have been included, and are not under Government control.

In "mu'áfi" and "ubárí" estates (estates of grantees either revenue-free or at reduced rates) also, the waste was included, on the same principles as regulated its being included or excluded from revenue-paying villages[3].

SECTION III.—THE SURVEY.

§ 1.—*Legal authority for it.*

It is only necessary to speak of this very briefly. When once thoroughly done, it is not, under ordinary circumstances, required to be repeated, at all events for a very considerable time.

The Oudh and North-West Provinces Acts take it for granted that a survey is part of the proceedings, and merely give powers to the Survey Officers. In the Panjáb, the notification of settlement declares what survey work has to be done[4], and the Act then gives general powers. The Central Provinces Revenue Act allows of a revenue survey being carried out in any district, irrespective of a settlement being ordered at the time.

§ 2.—*The professional survey of village boundaries.*

The early system followed alike in the North-West Provinces, Panjáb, and Central Provinces, was to have the survey and maps

[2] See these in detail in Chánda Settlement Report, section 324, page 180.

[3] See Abstract No. 3 in the Settlement Code.

[4] North-West Provinces Act XIX of 1873, section 41; Oudh Act XVII of 1876, section 25; Panjáb Act XXXIII of 1871, section 25; Central Provinces Act XVIII of 1881, section 27.

partly made by professional agency in the Revenue Survey Department, and partly by the agency of native patwáris or of amíns.

The Revenue Survey Department furnished a map which only extended to the *outer boundaries of villages* and the main blocks of cultivation and waste. These it defined with accuracy, as soon as the boundaries had been ascertained and disputes settled in the course of the thákbast or demarcation proceedings. The Revenue Survey usually mapped on the scale of 20 chains to the inch, or 4 inches to the mile.

The Professional Survey Department also compiled a map showing all the main geographical features of the district and the village boundaries taken from the large-scale village boundary maps.

The map of the district, or part of the district, was afterwards reproduced on a reduced scale by hand-drawing, or now by the aid of photozincography. These are the "Revenue Survey maps" (usually on the scale of 2 miles to the inch) which are familiar to my readers[5].

The Revenue Survey thus proved useful to the Settlement Officer in the following ways:—(1) it gave him an accurate record of the total area of each village; (2) a correct boundary configuration map showing waste and cultivated land; and (3) maps of the tract of country showing the relative position of the villages.

§ 3.—*The Khasra Survey.*

But none of the maps could be taken up by the Settlement Officer and worked on so as to fill in the field details. The Settlement Officer's survey was therefore a really separate one; only he could check his own village-map outlines by the professional map, and also check his areas by it.

The Settlement Survey was (under the earlier system) a non-professional survey of the interior portions of each village area, especially showing every field with a separate number. This map is called the "Shajra," and is on a large scale, usually 8 or 16 inches to the mile. It is accompanied by a detailed

[5] They show the village boundaries and the cultivation and waste areas. In some places they are 1 inch = 1 mile instead of the scale stated in the text.

index or register of every field[6] numbered in a series, according to the number in the Shajra, and called the "Khasra[7]." Hence the Settlement Survey is often spoken of as the "Khasra Survey."

[6] "A field is a parcel of land lying in one spot in the occupation of one cultivator or of several persons cultivating jointly, held under one title, and generally known by some name in the village. The plot of ground surrounded by a ridge of earth (mend) is not necessarily a field. Some of these ridges are more permanent than others, and serve to divide the land into fields, bearing separate names. The boundaries of fields are well known to the people and are sometimes distinguished by particular marks, such as the growth of certain grasses, stones, &c. In rich and irrigated land the separation into fields is generally permanent, but in light unirrigated lands it is liable to constant alterations. The field register (*khasra*) should show when the limits of fields are fixed, and where variable. The patwári should be careful not to show two fields as one, nor to divide one field into two." (Directions.)

[7] The Panjáb Rules (head C. III, 16–19) deal thus with the subject, giving the student a good idea of the general practice:—

"When the boundary map has been verified and passed, or when a boundary map or field map, prepared at a previous settlement, has been accepted as correct, a field map (*shajra*) shall be prepared for each village, showing the boundaries of every field according to scale, and the length of every boundary line common to two fields. If any field or plot separately owned is too small to be distinguished in the body of the map, it shall be shown upon an enlarged scale on the margin, with a sufficient reference to its position in the map. The fields shall be numbered consecutively, and the number of each shall be entered.

"The field map shall ordinarily be drawn on the scale of 16 inches to the mile (330 feet to the inch), or as near thereto as may be convenient with reference to the local measure. Where special circumstances render necessary the use of a different scale, the officer in charge of the settlement shall prescribe the scale to be used. The scale of the map in the measure which has been employed in the survey, the direction of the north point of the compass, and an explanation of any symbols employed in the map, shall be shown on the map.

"The field map shall show in addition to the matters prescribed in Rule 16—

(1) Such physical features as it may be possible to delineate.

(2) The village boundary pillars, the triple junction points, and distances between each such pillar and point.

(3) The limits of the principal village sites and burial grounds.

(4) The unculturable waste.

(5) The culturable waste.

(6) The cultivated land including fallow.

(7) Wells and tanks used for irrigation

(8) Irrigation channels.

(9) The boundaries of any well-marked sub-divisions.

(10) Village roads.

(11) Bench-marks of any Government or Railway Survey,

This survey was carried out by native surveyors (amíns) as in Oudh[8] and the North-Western Provinces and Central Provinces, or (as in the Panjáb) by village patwáris, who had been taught surveying.

In the latter province this method is still practised, and the patwáris are subjected to a regular course of training which, so far, has given very satisfactory results.

§ 4.—*North-Western Provinces Cadastral Survey.*

In the North-Western Provinces a new method, spoken of as the Cadastral Survey, has been recently introduced and experimentally adopted in five districts. Here the survey is accomplished by trained surveyors under officers of the Survey Department, and thus the Revenue and the unprofessional survey of holdings is combined into one. The work (on a scale of 16 inches) is more costly but more accurate, and the maps are certainly of great excellence[9].

Whatever form of survey is in use, the student will remember that it results in two main permanent records :—

(1) The **Shajra** or **village field map**, each plot being numbered.

(2) The **Khasra** or **village field register**, showing the names of proprietor and tenant, the area, rent, and soil class

[8] Digest, section III, § 1.

[9] The maps are multiplied by photozincography. The Cadastral Survey has cost, per 1,000 acres, sums varying from Rs. 289 in Mathurá, to Rs. 279 in Murádábád and Rs. 200 in Hamírpur. The Settlement Survey cost from Rs. 64 to Rs. 114 in an exceptional district (this includes a proportion of the Settlement Officer's pay).

The following gives again an idea of comparative cost :—

		Sq. miles.	Cost.	
			Rs.	
Settlement Survey.	Cawnpore	2,446	1,78,980	These figures are taken from Mr. Stack's Memorandum.
	Fatihpur	1,580	89,173	
	Aligarh	1,957	80,240	
	Murádábád	2,527	4,54,304	
Cadastral Survey.	Agra	2,190	3,50,552	
	Mathurá	1,369	2 53,358	
	Banda	1,895	2,17,311 (not yet complete)	
	Hamírpur	2,296	2,93,174	

according to the classification of soils, as made at the time of survey; particulars of irrigation are also recorded at the same time.

§ 5.—*The Survey is "Mauzawár."*

The survey is, in Revenue language, said to be made "mauzawár," not "mahálwár," *i.e.*, it deals with villages (mauzas), *i.e.*, with local groups of lands known by one name, not with revenue groups, or lands bearing together one sum of assessed revenue and called "maháls."

For the Central Provinces, this statement will require some modification. There the practice was, as the Act now provides, that any land which it was desirable to treat separately for revenue purposes should, without reference to its being a mauza or part of a mauza, be made into a mahál or revenue unit[10]. Consequently it was necessary for the survey to take notice of this separation and to show not merely the historical mauzas of the district, but also such further divisions as had been created for convenience.

Sometimes, for convenience sake, several small mauzas, owned by the same persons, or held on the same title, have been clubbed together: or a large and practically composite mauza may, by the effect of partition, have been separated into its locally-named divisions as separate[1] mahâls.

§ 6.—*The Mauza and the Mahál.*

The student will do well, once for all, to understand the difference between a mauza and a mahál. The mauza is the locally known and traditional division of land, as described in Chapter III of Book I. Of course, in many instances, the mauza is held on one tenure, and is in every respect a unit not only of locality to be

[10] Central Provinces Act, section 43.

[1] So in Directions, § 7 (Directions to Settlement Officers). But the former case is rare. It occurs only in districts bordering on Bengal. The partition of estates often leads to the formation of more than one mahál in the same village. This practice is said to be yearly increasing. Whatever the size of the mahál, however, it is assessed to revenue as a whole.

adopted in the survey, but also of title to be assessed with one lump sum of revenue; in that case the mauza and the mahál are identical. On the other hand, there may be in one village two or more separate interests, so that the Settlement Officer deals with them as separate mahâls: here the local division and the "estate" division do not coincide. In Oudh I have already indicated that, owing to a peculiar custom of dividing family property, some estates have come to consist of a series of patches, one perhaps in each of four or five or more villages or mauzas. Here, again, as the assessment follows the estate, not the mere local group, the mahál is something widely different from a mauza or village.

In the Central Provinces also, as above noticed, there were reasons for detaching groups of land and having them surveyed and treated as if they were separate villages. Yet they could not be called mauzas, because they were artificially created, so they are called mahâls.

§ 7.—*Survey of alluvial lands—North-Western Provinces and Oudh.*

In many districts there are estates or portions of estates liable to be affected by the action of rivers. I do not here speak of the rights resulting from the law of alluvion, but merely of the revenue practice in separately grouping and surveying such changeable areas for the purposes of assessment.

It is a rule[2] that in any estate in which one portion is liable to fluvial action, *i.e.*, where there are extensive areas of sand which may be rendered fertile at some future time by deposit of river silt, or where part of the estate is either actually severed by the river from the main estate, or where the lands along the bank may be washed away, or may be added to by deposits; in all such cases, this portion of the estate is separately marked off by boundary pillars, and settled as a separate "alluvial mahál" for five years only (if the Settlement Officer has not specially fixed the time). This

[2] See section 257 (*a*), Act XIX of 1873; Settlement Manual, 2nd edition, 1868, page 14; also S. B. Cir. Dep. I, pp. 18 & 38.

settlement does not absolutely exclude alteration in case of an unusual increment or decrement caused by exceptional action of the river. In such cases the estates are measured, and the revenue assessment adjusted, even though the five years have not elapsed. The assessment is not interfered with in any case unless the assets (on which the revenue is calculated) are affected to the extent of 10 per cent. increase or decrease, since the last revision.

The system in Oudh is exactly like that of the North-West Provinces. The principle to be followed is always stated in the *kabuliyat* or written assent to engage for the revenue[3].

§ 8.—*System in the Panjáb.*

This "separate chak" system[4] is adopted only in some districts for special reasons. But whether this system is adopted or not, the increase or decrease of assessment is arranged for in one or two ways,—whichever is specified in the settlement records. On one plan each field is separately considered, and calculating by the assessment-rate applicable, the amount of the jama' is increased or diminished, accordingly as the field has been increased or diminished, improved or spoilt, by sand, during the year. On the other plan, no notice is taken of increase or decrease in area, or of the assets calculated on the culturable area, so long as the change falls short of a minimum—usually 10 per cent.—on the whole culturable area of the estate as fixed at the time of settlement. The alluvial lands are inspected every cold season after the river subsides, and, if necessary, measured. Action is taken according to the system in force.

§ 9.—*System in the Central Provinces.*

The conditions about alluvion are entered in the wajib-ul-'arz, so that it is a matter of direct agreement. The Act also gives power to assess lands gained by alluvion at any time, even when

[3] Digest, section IV, § 30; and Circular 24 of 1878.

[4] That is, making the lands liable to be affected into a separately assessed "chak" or "alluvial mahál," as the North-West Provinces Circular calls it.

a settlement is not in progress. The principle adopted is the same as that of the North-West Provinces. If the increment exceeds 10 per cent. on the area of the mahál, an increase in revenue may be demanded. Loss is, however, not to be taken notice of unless it reduces the total assets, so that there really is not a fair margin of profit to the owner after paying the Government assessment. Sandy tracts are excluded from assessment, but become liable if afterwards fertilised by deposit of soil, even during the currency of the settlement[5].

SECTION IV.—ASSESSMENT, INSPECTION OF VILLAGES, AND REVENUE.

§ 1.—*The subject stated.*

For a Settlement Officer this, of course, is one of the most important subjects. It is *the* great work of settlement. Instructions and advice for the determination of the amount to be assessed, are therefore found to occupy a large space in Revenue Manuals and Circular Orders[6]. All Settlement Reports also deal largely with the subject, entering into a detailed description of the process by which the assessment was actually arrived at.

It is a little difficult to select the points to be enlarged upon in a Manual, the object of which is not to instruct an officer how to set about assessing an estate, but only to explain the general principle on which the "jamá," or annual sum to be paid as Government revenue, is calculated and applied. The principle now everywhere recognised is, that the *land revenue*—as distinct from certain *cesses* also levied—is to be a certain percentage (of which hereafter) of the "average assets" of each estate. In the North-West Provinces (as in parts of Bengal), where nearly all the land is held by tenants paying money-rents, the assets ought to be justly estimated, if they are taken to be the total of the rents which

[5] See Settlement Code, No. VI; and the Land Revenue Act, section 132, clause 9.

[6] See especially Colvin's Settlement Manual, 2nd edition, 1868, page 29; S. B. Cir. Dep. I, pp. 3-7, &c.; the "Directions;" Memorandum on the Revision of Settlement, North-West Provinces, by A. Colvin, 1872; and the Panjáb Rules; the Centra Provinces Settlement Code, 1863; Erskine's Digest, section IV.

the proprietor is able to obtain from his tenants, applying the same rent-rates, in the case of those lands which do not happen to be in the hands of tenants. To these rents, certain other items of income, such as fruit, fisheries, jungle products, have to be added; and where there is a great extent of valuable waste allowed (as above explained) to be part of the estate, as it is obvious that some day this will or ought to be cultivated, an addition may be also calculated on this account. Then we have a total of "assets," some fair proportion of which may be taken as the Land Revenue.

In provinces, however, where rent is not usually paid in money, where the proprietors largely cultivate their own holdings, and where tenants pay rent in the shape of a share of the grain produce, other methods have to be adopted. In the Panjáb, at the present day, produce-estimates are much relied on. These are prepared from different classes of soil, and by valuing the outturn according to tables of average prices-current, the assets can be calculated, a share of which will give the Government revenue, just as in the case of the assets calculated from rental values.

§ 2.—*Earlier method of assessment.*

But the procedure of assessment, as it is now understood, was not at first appreciated. In the early days of our settlements, *i.e.*, in 1822, the matter was not put in this light. Sixty years ago *money* rates of rent were much less common than they are now, and the proprietor's rents (as the State or Rája's share had formerly been) were often paid in *kind*,—a certain proportion of the yield of each field.

In the old days, when the State took its share in grain, there was no question about profits of the villager and the cost of living, and so forth. There was the grain on the threshing-floor, and it was divided, such as it was, between the Rája, the cultivator, and the village servants, all of whom got their dues out of it.

Then followed the Mughal and other later Native Governments who naturally, in the course of progress from primitive to more modern society, converted their grain share into a money revenue.

And when once money was paid, the original grain share became forgotten, and both rulers and their subordinates found it very easy to raise money rates to whatever figure could practically be got out of the people.

Our Government could not of course continue such a plan. A moderate assessment it was their desire as well as their duty to make; and how was it to be made? Naturally they considered that it was a share only in the *profits* of land that they were to take.

Now the profits of land consist in the balance left after deducting the wages of labour and profits on capital (which constitute the "cost of production") from the value of the produce. Consequently the framers of the Regulation VII of 1822 intended, or were understood to intend, that the revenue should be arrived at by taking a proportion of the sum which remained after deducting the "cost of production," from the *estimated* produce valued in money. Consequently, at first, every one set to work to try and find out, by enquiry, and also by experiment, what amount of grain the *land really did yield*, and what the costs of cultivation were; and that in the face of the difficulties which accident, variety of season, difference of situation (coupled with the interest the land-holders had in concealing the true facts) threw in their way.

In this endeavour to find out the produce and its value after deducting cost of production, and then calculating the Government percentage, the possibility of finding out, at least in some provinces, what the land *really did* (as a fact) *let for*, was overlooked.

§ 3.—*Progress in method.—Regulation IX of 1833.*

After a great deal of failure, and after many volumes of correspondence and reports on the subject had accumulated, the error was acknowledged. Regulation IX of 1833 repealed so much of the former Regulation "as prescribes, or has been understood to prescribe, that the amount of jama' to be demanded from any mahál (estate) shall be calculated on an ascertainment of the quantity and value of actual produce, or on a comparison between the cost of production and the value of produce."

The modern practice, however, was not immediately developed. Even after 1833, a method of assessment known as the "aggregate to detail" method, was largely followed. This I shall again allude to afterwards; here it will be enough to say that it depends on assuming a lump sum to start with, and then seeing how it divides over the individual estates, and then correcting it till what seems a fair result is reached. Gradually, however, the modern practice of ascertaining the average assets was substituted, the rental being taken as the basis in the North-West Provinces and Oudh (where it is possible to do so); and calculation by aid of produce-estimates as well as other methods being still used in those places where money rents were not common or could not be applied easily in calculating. That is a brief summary of the history of assessments. To explain it more fully, I must separately describe (1) the system of the North-West Provinces, where money rents are general, and (2) the system followed where either the landowner cultivates most of his land himself, or where the crop is still divided between landlord and tenant in kind.

§ 4.—*System of the North-Western Provinces.*

To understand the principle of assessment *where money rents are general,* we must go back a little and consider what the effect of our settlement was. I have before stated, and in a previous chapter explained in detail, that the earliest form of Government revenue was the Rája taking a certain share out of the village grain heap on the threshing-floor. The share of the State was no doubt fixed by custom; and under rule of a wise king, who had his officials well in hand, the customary share was not exceeded; extras were levied in the shape of taxes, fees, and contributions. In a former chapter it has also been described how, in the reign of Akbar, the State share was converted into a money assessment[7]. Akbar did not enforce the

[7] See some admirable remarks on the process by which a change from grain to a cash revenue was effected, in Mr. W. C. Benett's Gonda Settlement Report, 1878, § 97 *et seq.*; also see page 172, *ante,* where I have described Akbar's Settlement in Bengal under Rája Todar Mal.

change all at once; he left it optional, at first, for the raiyat to pay in cash or in grain. As population increased, estates became multiplied by extension of cultivation and by the division of family property; at the same time coined money became more plentiful. In short, as it became more difficult to manage the revenue collection in kind, it became easier to levy a cash revenue; the means of paying in money became more attainable. Before a grain share was given up altogether, an intermediate plan for saving trouble was adopted, namely, that of estimating that the standing crop ought to give so many "maunds," and then requiring the village to make good the State share on the basis of the estimate. This was of course unpopular, so that money rates came to be preferred[8].

[8] In the records of the Ambála Commissioner's office I found a report on a lapsed estate of Sirdárni Dayá Kúnwar, dated 23rd May 1824. It contains the following curious passage (which I transcribe exactly,—capitals and all):—

"The Native system of making the collections may be termed three-fold:—the kun (kan) [also called "kankút" and "típ"], bataee (batái) and tushkhees (tashkhís), all of which had at different periods been adopted by the officers of the late Sirdarnee. The kun or appraisement [of crop before cutting], if skilful makers can be found, is the most simple and expeditious method, but requiring great Fidelity, Experience, and Judgment in the "kunneea" or appraiser, who should be chosen from among the oldest Zumeendars, and over whom the Tuhseeldar should keep a vigilant and circumspect Eye. In the case of a cultivator being dissatisfied with the appraisement of his field by the kunneea, an instant recourse should be had to the Practice of beating out a Beega or a Biswa of the grain on the disputed Field, and thereby ascertain the exact quantity to the satisfaction of both parties. It is obvious that a constant appeal to this principle ought to be avoided as tedious and vexatious, and it is seldom that the cultivator calls for its application, still less does the kunneea like to put his judgment to the Test.

"The butaee or division of grain on the spot seemed to present many objections. Three Heaps are made: one for the Sarkar (the Government), one for the Ryot, and the third for the Khurch, or village expenses; so that the Government receives only about one-third of the produce, which has led to the phrase "bataee lootaee" or Division is plunder. The grain has to remain in the field for a length of time, exposed to the Elements, ere it can be trodden out and winnowed, added to the expense of persons to watch the khulwara (khalwára) or stacks, from the spoliation of the Zumeendars, who are tempted to remove portions of grain during the night season. Could these and similar Difficulties be surmounted, no mode offers such a show of justice to the Government and its subjects as dividing the Gifts of nature on the spot.

"The tushkhees, or farm of an estate to the highest bidder, distresses the cultivator, however pleasing the lucrative receipts may appear for the first few years of the lease . . . . ."

Akbar's settlement was based on a valuation of the produce. But it is only in districts to which this settlement extended, or was virtually enforced, that money rates were substituted for grain rates on such a principle. It was more common to take no thought of the value of land, and assess a fixed annual charge per plough. This, it may be remarked in passing, is in itself enough to give the first impulse to competition in land, because men would find out that one farm was more profitable than another, though it had the same plough rate.

These rates being fixed, they became well known; and crystallising, like everything Indian, into being "the custom," they survived all changes for a long time. Nor is this contrary to what has been said of the uncertain exactions under Native rule. While the Government was strong, the rates fixed were respected, and extra charges were limited in number and levied by proper authority. But in the later days of decline and weakness which preceded the fall of the Native rule, the Revenue farmers raised rates uncontrolled, and grasped at what they could get, giving only a certain portion to the treasury. Even, then, there are abundant indications that under this increased pressure the *original customary State revenue rate was still known*, the extra demand was levied in the form of "fees" and "cesses[9]," rather than by any admitted alteration of the revenue rate itself. Such is the tenacious force of custom. No doubt, however, the rates that were then taken, having regard to the value of produce and the extent of land under cultivation, are quite as much as *could* be paid, and often represented the entire profits, leaving the cultivators only enough to live on.

When the British Government was introduced, all this came to an end. Government recognised or conferred (as we have seen) a proprietary right in the land, and handed over to the proprietors so recognised, the produce or the money rates paid by the actual cultivators which would have been formerly directly taken by the

[9] See also the account of the levy of "Cesses" in the chapter on the Bengal Permanent Settlement.

king's agents. Our Government merely stipulated that the proprietor should pay to the treasury a fixed sum, which was a moderate share of what it is estimated he could fairly collect. We disallowed the extra rates, and excessive cesses as such; but the old customary revenue rates, with such local alterations as time and circumstances had brought about, became the *rents which the proprietors got*, and these rents, as long as they remain unaltered, would form, on the principle already alluded to, the main portion of the assets on which the Government share was to be calculated.

Having, however, recognised proprietary rights, we did not desire to withhold what were, from a European point of view, the natural and legal consequences of that proprietary right. Except where we stepped in with legal enactments to protect certain specified classes of "tenants," we left the proprietors free to get more rent out of the land, if it could be got by fair means, dependent on competition and the increased value of land and its produce; and that very soon came to be the case. Waste land was available for the increase of cultivation: good government brought security and peace; roads, railways, and canals were made, and the value of land rose greatly; while population increased with it. Produce of all kinds also had a far higher value. The managers of land no longer had to seek for tenants and to coax and keep them; people began to come and ask for fields to cultivate, and were willing to bid against each other for them. The rents could then no longer remain at the old customary rates.

Now the modern theory of Government revenue is, that it is a fixed and moderate share of the proprietor's assets, whatever those assets are; consequently to make a proper assessment the "assets" must be known. How, then, are the assets to be ascertained?—or, in other words, since we have no longer rates fixed by ancient custom to deal with, but something like real rent rates dependent on competition, how are we to get at the actual or full rents which are to be the basis of our calculation? That is the question to be answered, under the modern method of assessment, in the North-Western Provinces.

But this method was not all at once adopted; indeed, as I remarked, the result which I have pictured, the universality of cash rents—representing not a mere customary but a real rental—was not brought about at once: consequently in the first settlements the *rental* did not occupy anything like an exclusive place.

In the early settlements the method which I have alluded to as the "aggregate to detail" process was adopted. By this a lump sum was assumed in the first instance for an entire pargana. This was taken on the basis of a comparison of former Native settlements and so forth. The lump sum was then divided over the villages, and then the village jama's were again compared in various ways, and corrected by addition or deduction consequent on various circumstances which were observed on the spot, and at last a total for each village was arrived at.

§ 5.—*System of assessment prescribed by the "Directions."*

In the Directions[10] this practice is directly recommended, not indeed as a method to start with, but as a method for testing the figures when they have been independently calculated.

The Directions declared that the assessment was not to be a mere arithmetical process, but to be based on sound judgment and calculation. The Revenue demand was not to be more than two-thirds of the net produce in case of lands cultivated by proprietors, or of the gross rental on lands held by tenants. Villages were to be grouped together according to their general similarity of position and circumstances, as affected by the same influences. There might be a group of canal villages, or a group on low moist land, or on high-and-dry land with very deep wells. One set might be favourably situated as regards a railway which exported their produce, another might be close to a large town, and so forth.

The Settlement Officer had to start with a correct list of the village lands, cultivated, culturable waste, and unculturable; this also was classified into irrigated and unirrigated. Then he could ascertain the rates imposed at former settlements, and

[10] Directions (Settlement Officers), para. 48 *et seq.*

whether that amount was easily collected or not; if the village had been sold or had been farmed, and what was got for it; at what price does land now sell or mortgage for; next he had tables showing the gross rental of the village, as compared with that of the other villages in the same tract of country and with generally similar circumstances. If the rental of any village was considered suspicious, or, owing to grain rates, was difficult to ascertain, it was said that the Settlement Officer's inspection, aided by the knowledge he had acquired of the description or class of the cultivating community, would enable him to make a very fair estimate of what the rental ought to be. Lastly, the opinions of the pargana officers (qánúngo, &c.), and the estimate of respectable neighbouring landholders not themselves interested in the matter, were to be considered.

It will be observed that this gives a general guide as to the *amount* of the revenue, but does not decide on any particular *process* of calculating it. It does not say definitely that the result of these steps is to be the extraction of a fair revenue-rate *per acre*, either general or for different soils according to circumstances; nor does it prescribe that this acreage rate has to be multiplied over the area, so as to give the village jama'. Yet in most places this was the method adopted, while in some the more general plan of taking a lump assessment, without making acreage rates at all, was still adhered to.

In the case of the lump sum estimate, there were various data of former settlements to go by, and the history of the village under Native rule.

In the case of acreage rates being calculated, these rates could be checked in a variety of ways. The Settlement Officer could compare the rental of the land calculated at his "soil rates" with what the rental came to when calculated by rates on each plough (which is a method of payment often adopted by the people), or by rates on each well[1], or with rates obtained by valuing different propor-

[1] That is, on the locally recognised area or block which one well waters; this will vary from village to village, according to the depth of the well, the character of the soil, &c.

tions of the produce in kind. He could also probably find a village near at hand of a similar class, the assessment of which was known to be fair. He could see what rates per acre this assessment gave as compared with his own. Then, also, there were data of former settlements, schedules of revenue taken in the days when the land was held by a local chief, and so forth: he could calculate the jama' which his own rates would give and compare it with these actual jama's, and thus see whether it was too high or too low. The former jama' may have been collected with difficulty; returns of coercive processes may show that it was only got in with pressure, while sales of land brought in low prices, entirely owing to the severity of the assessment. If, then, his present rates when multiplied over the acreage gave a total jama' as high as that former severe one, they were clearly excessive, unless it appeared that, since the days of that assessment, the land had so risen in value, and its opportunities in the way of market or communication had become so much improved, that what was heavy then could be light now; in which case his rates might be justifiable.

The revenue rates for the cultivated area being known, then it might be that some additional assets were to be allowed for. There might be a large amount of valuable waste, which, though not then under the plough, might easily be cultivated, and the assessment would be raised for this, not of course to such a figure as would be attained by making the whole to pay at cultivated rates, but by adding a general fair rate for waste. There might be also valuable jungle produce; an addition would also be made for this.

And there were also often local circumstances which could not conveniently be allowed to affect the average rates, but might be allowed for by a general deduction on the jama'[2].

[2] It is not necessary to go into this subject. I may, however, mention an instance. It is well known how *castes* differ in agricultural capacity; some are by birth bad cultivators and lazy, and others are naturally good farmers and diligent. This tells on the land very much: the one will get crops which will meet with ease a revenue assessment that would crush a village of another caste on precisely the same soil. It was not thought possible, at least in the North-Western Provinces, to fix a

I have devoted some detail to this subject, because not only was this the method adopted in earlier settlements, but the different means of checking the jama' and so forth are still largely used. It is only, indeed, in the North-West Provinces that the system of rent-rates, to be next described, has been perfected and superseded the earlier methods of assessment.

§ 6.—*The modern system of the North-Western Provinces.*

The modern system in the North-Western Provinces was first perfected in the Farukhábád settlement under Mr. C. A. Elliott. It is essentially a process by which a true rent-rate for every acre of assessable ground is ascertained, which rate is applied to the estate with unvarying accuracy. The total may be modified in the lump, by the occurrence of particular conditions which it is not convenient to allow to affect the rates; but the *rent-rates* are the really important basis of the whole calculation.

In making out these, the first help available is the jamabandi[3], a village return of rents stated to be actually paid. But this is obviously not a sufficient basis for a valuation. For example, there are some lands held by the proprietor himself, and the rent-roll does not show any rent for these; there are charitable rent-free plots and other sources of deduction. We must therefore *add* the rents that would otherwise be payable on these, and then we get (so far) what is called the "corrected rental." But even this is not enough. How do we know that these rents are *really* paid and not understated? Perhaps, if the rents are entirely paid in cash and great pains are taken in checking and discussing the entries,

generally different set of rates for each different caste; the matter can generally be best provided for either by the moderate reduction of the sanctioned rates in the particular village, or by some such general allowance on the total jama' as alluded to in the text.

[3] *Jamabandi* properly means, not a *rent-roll*, but a roll showing the distribution of the *revenue* burden among the cultivators: when this sum became the proprietor's "rent" (thus illustrating the remarks previously made), the term "*jamabandi*" came to mean a proprietor's rent-roll.

the total may be an approximation to the truth[4]. But the landlords are directly interested in stating the rents as low as possible, and will often assure the Settlement Officer that the tenants can pay no more. This is all very well, but somehow or other it appears from the information of an honest landlord in a neighbouring estate under exactly the same conditions, that a much higher rent *is* actually paid without difficulty on his land. Is this only an accident, or how is it?

The Settlement Officer must, therefore, resort to some other guides besides the asserted totals even of a "corrected" rent statement. In other words, he must make out an *estimated* or calculated rent-rate, which will be true as a fair basis of assessment; and in order to be this the rate must be not one that is true for any one year, but the average of prevailing rent-rates.

The methods of calculating this average rent-rate were, as might be expected, different in different districts, before what I may call the finally approved method was adopted. But in all cases the first necessity is to form assessment circles—tracts of country as nearly as possible homogeneous—so that the same rate or rates can be applied throughout them. For this purpose the villages are grouped into *circles* having generally the same features. Thus we may have a circle of villages on moist alluvial land along a river, or along a canal; a group on hilly ground where the climate is different; a group along the edge of the dry or desert high land where wells cannot be employed; and so forth. If a whole pargana (or small fiscal sub-division) of a district is practically identical in character, then circles are not required, and the pargana can be dealt with as a whole.

[4] This seems to be especially so in the old and well-populated districts of the North-West Provinces. Thus Mr. Auckland Colvin writes (Memo., page 7)—"the rates paid by the occupiers were perfectly well known throughout the country, and might be supposed to represent more accurately than any calculation by an outsider the letting value of land." This is, I understand, considered by some competent judges to be too general a statement even for the North-West Provinces. It does not of course apply to provinces or districts where cash rents are not the custom, or where the land has not been under settled government for a sufficient time for rents to have received their full natural development.

§ 7.—*System of land-zones in each village.*

I do not think it necessary to describe the rougher methods of rent-rate calculation[5], I shall therefore come at once to the improved or modern method, perfected in the Farukhábád Settlement. This was the foundation of the rules drawn up by the Board of Revenue in 1875.

The system is based on the fact that the villages exhibit certain zones of cultivation, the rental value of which is different, irrespective of difference of natural advantages of soil.

The *homestead lands* are found to be the best lands in the immediate vicinity of the village site; here they receive much more care than lands further off, are more easily manured and better watered. They are also likely to be the best lands, because, naturally, when the village was founded, the best and most fertile soil would be brought first under cultivation, and the village residences would be established in convenient vicinity to such lands. The value, then, of all homestead land, is in many cases quite independent of, and rises superior to, any differences in the soil, if indeed such exist.

Next in value is the *middle zone*, and least of all is that consisting of *outlying lands* at a distance from the village site, which are less carefully cultivated, and to which manure is not so easily carried.

These zones are called "hár," and it is the practice to recognise the homestead, middle, and outer, hár. The villages have recognised rates for land in each hár; as I said before, the homestead has a uniform and comparatively high rental value, irrespective of soil, and is sure to be irrigated; but the middle and outer zones will have their rental value different within the zone, according to the soil and according to means of irrigation. So that soil classes

[5] In some of these, the village rentals, corrected as far as possible, were taken, so as to give a general all-round rate per acre, without respect to soils: the plan was, I believe, adopted in Sahárånpur. In other places soils were disregarded, but different general rates for irrigated and unirrigated land were relied on. In others there would be again some classified according to their quality, as clay, sand, &c.

(which are usually few in number and take notice only of well-marked differences) are made use of within each hár if need be; and these soils, again, may be irrigated or unirrigated. Practically the homestead "hár" needs no such sub-division, as it is sure, in all cases, to be irrigated: but in the other "hárs", soils may differ, and each soil may differ again according as it is irrigated or dependent on rainfall only.

§ 8.—*Inspection of villages in order to classify soils and find out rent-rates.*

The Board's rules direct that when the settlement measurements are sufficiently advanced, the Settlement Officer shall proceed, during the field season, to inspect the villages and to mark out on his map the recognised hárs in each village, and also any soil differences that may warrant a separate classification; so that all the fields numbered in the map will come under one or other class.

Next, the Settlement Officer enquires into the prevailing rates of rent for each class of land in each zone or hár, both by local enquiry and by reference to village records; he also is required to make out tables showing the area of each class of soil in the village and the actual rents paid for that part of it which is held by tenants.

During the village inspection, all facts regarding the agricultural statistics and the revenue and general history of the village, are collected and noted down, and it is during this inspection that the Settlement Officer forms his conclusions as to circles of villages, or groups already alluded to, throughout which the rent-rates may be taken as fairly uniform for the same soil-class.

A list is now made out of all the villages in the assessment circle. Those villages are excluded which might disturb the general average, owing to the fact that they are known to be rack-rented, or to be cultivated by the proprietors, or to be held at exceptionally low rents by some favoured caste of tenants.

The list is sent into the office, and there the rent of every field in each village, as it appears in the field register, is placed under the soil-

class to which it belongs, as already known from the Settlement Officer's inspection and noting on the map. The result of this is that under each class there will be a list of different rent-rates. Abnormally high or low rents being excluded, the rest are added up and divided by the total area of the soil-class. The result gives an average rent-rate for every acre of that class of soil throughout the circle. As the classification of soils is the result of careful inspection, and the rent recorded against each field is subject to repeated testing while the field registers and the jamabandis are being prepared, the averages are accepted as true average rent-rates.

It is hardly necessary to remark, after this explanation, that two things are needed,—first, to get out of the record-room all the facts about former assessments, and whether they were collected with ease or the reverse; and, next, for the assessing officer to go himself, map in hand, and study the villages on the spot, their soil, and their circumstances, marking the wells and the limits of the different soils in his map, and keeping a note-book for all facts elicited.

The Settlement Officer keeps a manuscript book during the progress of settlement operations, and in this he causes to be transcribed (in English) all agricultural statistics connected with each village or estate at the past and present settlements. This book contains all the information which is requisite for the compilation of the "General village statements" which are made out as soon as the Board's sanction to the rates is given[6].

The pargana note-books are now preserved, though they do not form part of the formal records of the settlement. Practically, the "village statements," which are part of the record, contain, in an abstract and tabulated form, the most important information contained in the pargana books.

As soon as the rent-rates are calculated out, the rent-rate report is submitted to the Board of Revenue[7] through the usual channels.

[6] S. B. Cir., Part I, Dep. I, Rules 13 and 21.

[7] Act XIX of 1873, sections 45 and 257, under which Rules for preparing such reports are made.

This report justifies the rates, and explains the basis on which they have been ascertained, and in fact gives a full description of the whole procedure, so as to satisfy the controlling authority of the correctness of the results arrived at.

I do not propose to describe the contents of this report, as it can be learned in detail from the Board's Circulars.

§ 9.—*Classification of the revenue.*

When the rent-rates have received sanction, the village jama', or lump-sum assessment, has to be calculated.

The revenue or Government share is one-half of the rent-rates. The revenue total may therefore be the rate multiplied over the area. But in many instances there are local circumstances which demand a local reduction of rates or some modification of the total. There may be also other assets to be taken into account, such as the proceeds of fisheries or jungle produce. So that the actual jama' may be different from a mere calculation of area at the rent-rate[1]. The jama' is therefore again reported for sanction: it is then announced on a day fixed by proclamation, at the tahsil. The rules as to the person settled with, and what happens if engagement is refused, will be described presently.

§ 10.—*Tracts paying grain rent.*

Even in the North-Western Provinces, I should mention, there may be tracts in which grain rents are still used; these, I understand, are dealt with by assuming a cash rent-rate, which is that of a tract of the same kind of soil and under similar conditions, for which a cash rent is known. The practice of making produce-estimates, and dealing with them as in the Panjáb, is not followed.

§ 11.—*The system in Oudh.*

The general instructions to the Settlement Officer do not differ materially from those in the North-Western Provinces, but there

[1] See S. B. Cir., Dep. I, page 9. Groves are exempt from assessment.

[2] Act XXIX of 1873, section 45.

was a material difference in the method of assessment. The method of taking lump sums for the pargana was never followed; and in general I may state that the main difference consisted in paying much less regard to average rates for the same class of soil throughout an assessment circle or a pargana, and dealing with each village separately.

A village rent-roll was prepared, and this was carefully corrected so as to attach a rental value to sír lands cultivated by the proprietors themselves, to rent-free holdings, and to lands held at privileged rents. The village rent-rates were obtained by an elaborate analysis of rents paid by the several classes of cultivators on several classes of soil, as in the homestead, middle zone, and the several kinds of soil in the outlying zone.

An appraisement was also made on culturable land not yet brought under the plough[10].

Fruit and other groves were exempted from assessment up to a total of 10 per cent. of the cultivated area. In 1879[1] the rules which directed (1) that the land occupied by a grove and exempted accordingly, should be liable to assessment on the trees being cut down, unless they were replanted within a reasonable time, and (2) that a reduction of assessment should be made on account of assessed land subsequently planted with trees, so long as the total area of revenue-free grove land did not exceed 10 per cent. of the cultivated area, were placed in abeyance. But all lands had the full benefit of the rule which exempted grove lands which existed at the time of settlement (up to the 10 per cent. limit), since all the settlements had been completed before 1879.

Thus the peculiarity of the Oudh settlement, as distinguished from that of the North-Western Provinces, is that the revenue,

[10] In Oudh also the village rent-rates were allowed to be much more affected by the *caste* of cultivators than in other parts. Thus in several of the Oudh settlements an abstract of the rental of each village has been prepared showing the principal castes (*e.g.*, Brahmans, Rájputs, Kurmis, Moráos, and "others"); the area held by each is shown, the rent paid, and the rate per acre or per bíghá which this gives. Against this is shown the "proposed rate" and the rental for the village which this would give.

[1] Circular II of 1879.

generally speaking, has been assessed on the individual rental of each village, with little reference to average rates expressing the level of rents over large tracts of country. The prevalence of taluqdári tenures and the fact that the great mass of cultivation is in the hands of tenants-at-will, were circumstances peculiarly favourable to such a method of assessment. In the best cultivated parts of the province, the rents imposed by the taluqdárs represented with sufficient accuracy what the land could fairly bear. The areas held by proprietors as sír, and by under-proprietors and others at favourable rents or rent-free, were small as compared with the lands for which tenants-at-will paid full rents; and the rent-rolls were, on the whole, well kept and trustworthy documents.

In the north of the province, where cultivation was comparatively recent, and rents were not uncommonly taken in kind, the analysis of rent-rolls had to be supplemented by estimates of the value of grain-rents. If grain-rents were the exception, villages paying in kind could be assessed by applying the rent-rates found to exist in similar cash-paying villages. When grain-rents were the rule, the landlord's share of the grain, as shown in the village accounts for a series of years, was turned into money at harvest prices, and the equivalent cash-rents thus obtained were applied to the sír and privileged holdings: produce-estimates were also applied to different classes of soil, and the assessments were arrived at partly from these and partly from general considerations[2]. In Oudh, the rent-rate report, the sanction to the total jama' deduced from it, and the other procedure, are exactly the same as in the North-Western Provinces.

§ 12.—*System of assessment in the* Panjab.

Here, in the older settlements, the "aggregate to detail" method was much employed; and even now the procedure is different to what it is in the North-Western Provinces. Grain-rents are still common, and much of the land is held by cultivating proprietors[3].

[2] This is taken from Mr. Stack's Memorandum, p. 144.

[3] Only about 44 per cent. of the land is held by cultivating tenants.

It might seem to the casual reader that it is a very easy thing to turn a grain-rent into a cash-rent, by simply valuing in money the landlord's grain share, whatever it is. But this is not so. For instance, the early "summary settlements," or temporary arrangements made immediately on annexation, were made in this way; the grain-rates of the last Sikh collections were converted into money at ruling prices. But a rapid fall in prices followed, so that the demand became too high and had to be reduced.

The inspection of the villages and the collection of all facts relating to their revenue history and circumstances, is just as necessary here as in the North-West Provinces. The villages are grouped into assessment circles, and certain classes of soil have to be recognised. Tables are then drawn up showing the estimated produce of each class of soil, and if need be of each kind of crop, as its yield may be different on the different classes of soil, and on irrigated and unirrigated land: the total produce of each circle is thus arrived at. Then it is known that the landlord's share is usually so much, *e.g.*, one-third of the produce of flooded (sailába) land, one-fifth of well-irrigated land, and so on. This share is calculated after deducting certain items such as crops cut for fodder, portion of crop paid to the gatherer, &c.; it is then valued in money on the basis of an average for a number of years (20 years if possible) of the harvest price of grain. This forms the produce-estimate of "assets" of cultivated land; the revenue is to be about one-half these assets. Wherever cash-rents are paid, these are of course made use of as a standard of comparison.

The table also shows what the jama' would come to at one-sixth the gross produce, for comparison[4].

The next thing is to calculate a revenue-rate[5] *per acre* for each

[4] It is found by experience that the revenue falls at about one-sixth of the gross produce in most cases, but sometimes it falls at one-eighth or one-tenth or only one-twelfth in the drier and poorer districts.

[5] In the Panjáb they speak of revenue-rate, not of rent-race. The North-Western Provinces enquiry being directed to the average prevailing rental of land, the rates which this shows per acre are the main features for determination; the revenue-rate is simply half this. In the Panjáb, as there are no rent-rates to be generally and widely determined, the Settlement Officer goes at once to the value of the Government share per acre, which is the *revenue-rate*.

circle and for each kind of soil it is thought necessary to distinguish. These rates can be modified till what appears a perfectly fair rate for each soil is arrived at; then multiplying the whole area of each kind of soil separately rated in the circle by the rates, the circle jama' is arrived at, which is at once comparable with, and tested by, the produce-estimate.

The revenue-rate *per acre* in the circle, here spoken of, is generally arrived at by taking *an assumed fair circle jama'*, and distributing it over the areas of each class of soil in the circle, according to the order of their relative fertility and value. Rates so obtained are tested by comparing them with rates shown by villages the assessment of which is known to be fair, and in various other ways. They are then modified and shaped till they appear true and can be justified in the assessment report. "The revenue rates and the opinions which the assessing officer has formed as to the [total] assessment which individual estates might properly bear, will thus act as a mutual check on each other . . . Other tests are furnished by rates on ploughs or on wells when the system of distributing the revenue by such rates is familiar. After determining a fair average rate for each plough or well, the total revenue which the application of such rate whould give for the assessment circle is calculated and compared with the produce-estimate[6]."

The revenue-rates have to be reported[7] in full detail and justified, in the same way as the rent-rates are in the North-Western Provinces; and various statistical statements accompany the report.

The rates being sanctioned, the Settlement Officer proceeds to distribute the revenue of the villages according to the rates. But sometimes the rates require modification for particular villages, on general considerations applicable to those villages; and even then the total jama' may be modified by the addition of certain assets and by allowances for matters which cannot be made to affect

[6] Directions (Panjáb edition).

[7] This is not specifically required by the *Act*, but it is by the Rules (head C. V. 1) which are issued under section 66 (5).

average rates, consequently the total sum finally assessed has again to be reported[8]. Small changes are not explained in detail in this report; but the reason for them has to be noted in full in the "village statement" of the particular estate affected. Strictly speaking, the jama' ought not to be announced till it is sanctioned: but in practice it is so, and sometimes even realised before sanction is received. The jama' is open to a final revision by Government up to the time when Government declares the settlement sanctioned[9], which may not be for some time after the jama's have been in force[10].

[8] Act XXXIII of 1871, section 31; Rules C. V. 5.

[9] Act, sec. 18; Rules C. V. 5.

[10] I shall give two very brief examples to show how the revenue rates or assessment reports are prepared:—

The first is Mr. E. O'Brien's report of tahsil Alipur of the Muzaffargarh district, one of the dry southern districts of the Panjáb. The tahsil is situated in an angle above the junction of the Chenáb and Indus. The tract was grouped into assessment circles, one of which was cultivated by aid of the flooding of the Chenáb, the next by the flooding of the Indus (which is a separate circle, because the deposit is less fertilising and the river action more violent); the third, the southern wheat tract, Cháhi sailába, which is irrigated by both rivers when in high flood, where there are wells and a little canal irrigation; and the fourth circle, Cháhi Nahri, is one where inundation canals (besides wells) are used.

Assessment circles.	No. of villages.	Total area. Acres.	Cultivated.	Uncultur-able waste.	
1 Betchenáb	87	89,375	20,303	20,074	The rest being fallow or culturable waste.
2 Bet Sind	42	184,963	22,887	61,084	
3 Cháhi Sailába	50	145,872	29,192	30,872	
4 Cháhi Nahri	48	148,393	48,647	27,448	

The soils of the circles are then described.

The fiscal history next occupies a chapter, in which is given an account of the Sikh collections and of the cesses they levied.

The summary settlements under British rule are also described, and here is noted the difficulty which occurred from the practice, mentioned in the text, of valuing the Government grain share in money. The share was converted into money at the rates of Rs. 1-8 and 1-12 a maund; but grain shortly afterwards fell to 0-11 and 0-12; the assessments were consequently felt to be very heavy.

The land tenures are then described, a subject I here purposely pass over. The difficulty of collecting the demands fixed at successive summary settlements is next discussed.

Irrigation has to be dealt with in the Panjáb as in some respects a separate question.

In many districts well irrigation was taken into consideration in fixing the rate for irrigated land generally; but in some districts

Part III of the report is devoted to comparative statistics, population, cultivated area, increase in number of wells, and so forth; and concludes with a table of prices of produce in four periods of 5 years each.

Part IV gives statistics of produce. No less than 640 experiments had been made in seven different "harvests," and estimates of outturn were obtained from meetings of agriculturists, and local enquiries were also made. A table is then drawn in maunds per acre for each circle, for nine chief crops; the soil varieties do not here affect the yield.

Part V approaches the subject of the rates. It is explained that the rates are to be one-half the profits.

We have then a table showing the total area for each circle; total value of its produce; amount to be deducted (consisting of crop consumed as cattle fodder, &c., and net value; the deduction for village servants and the "balance." The cultivator's customary share is then shown, and the difference between this and the balance is the proprietor's "net assets," which come to Rs. 3,36,830 for the entire tahsil of four circles, and the "half assets" are Rs. 1,68,415. That would be the assessment on a produce-estimate only.

Then acreage rates are calculated; soil differences are shown to be unimportant, instead of which six kinds of irrigation (*e.g.*, by well only, by canal by flow, by canal by lift, by well and canal, &c., &c.) are adopted as requiring different rates.

The rates proposed for each class in each circle are then at once stated; they are compared with similar rates in other tahsils. They appear to have been calculated out beforehand in the reporter's mind and manipulated till they seemed fair; that part of the process does not appear in the report. The rates are merely stated, and reasons given for believing them to be just. The jama' which would be obtained at these rates, is compared with the jama' of the last settlement, and the general incidence of rates on cultivation by the two jama's are also stated.

This tahsil has certain features of fluctuating assessment and rates on wells and canals which I purposely omit.

The rates are then shown in a general table, and these are compared with rates in other districts.

Besides the land assets in the tahsil, there is much grazing ground, and date trees also yield a revenue; the method of assessing this is described.

The total revenue obtained by these is then shown, which is lower than that by the produce-estimate; and proposals are made for dates of paying instalments.

As another specimen, I take the report by Mr. Fanshawe of Gohána tahsil, Rohtak district (1879). This is quite a different style of district; one of the old North-Western Provinces districts in the south-east corner of the province near Delhi. As usual the report opens with a description of the country. Here soils were classified. Reasons are given for making four assessment circles—western rain land (cultivation dependent chiefly on rainfall), central canal irrigated, eastern rain-

the land was first rated as if it were dry land, and then a separate rate per well, varying from Rs. 5 to Rs. 20, for the area watered by each well, was added.

Canal irrigation may also be separately treated. In some districts the land was rated at dry rates, and a "water advantage rate" added representing the increased value of the land consequent on the fact that it could be irrigated; this rate was remitted if water was not available in the canal. This rate is part of the *land* revenue, and is of course independent of the price of the water supplied by the canal department. For it is obvious that irrespective of that, the land itself can bear a higher assessment and

land, and eastern canal irrigated. The area of each circle and percentage occupied by each principal crop is then given in a table.

Next follows the fiscal history, the former settlements, and the rates at which these fell per acre. Part III gives a study of the results of the last (regular) settlement; increase of cattle, of cultivation, of irrigation by canals and wells, and so forth. Here tenants pay cash rents to some extent. So that here a table shows the rent-rates of irrigated and unirrigated land, and how much above the Government revenue per acre, it falls. Part IV is devoted to statistics of produce. Experiments were few, but local enquiries and comparison of data were many and extended: the character of seasons and the changes in the conditions of cultivation are discussed; and then, as usual, there is the calculation of nett produce, and here the valuation of one-sixth gross produce is also shown. Part V deals with proposed rates. Here much use is made of the rates which the jamas of former settlements, regular and summary, gave; these are considered in reference to changed circumstances, and compared with rates in other tahsils; a table of rates proposed is given separately for (1) canal, (2) well, (3) manured, (4) dákar and matiyar soil, (5) rausli soil, (6) bhúr soil, and (7) culturable waste or fallow. These rates are applied to the circles, and the jama' thus obtained shown in a table. It is then shown that the increase is proportioned to increase in cultivation, irrigation, population, and cattle. These revenue-rates are then compared with the rent-rates; and then the jama' by rates, with the jama' at one-sixth gross produce.

These two abstracts are intended just to show, in a brief manner, how the rates are calculated, explained, and justified.

The reports, it will be observed, do not go into the *revenue total* for each village. That is separately arranged after the *rates* have been agreed to. For some villages the total revenue may simply be the rates multiplied by the area; in others there are allowances to be made for lands spoilt by 'reh' or saline efflorescence, for the caste of the cultivators, or additions to be made for local produce of jungles, fisheries, gardens, &c.; but in general that total will come out very similar to the general estimated result by rates. I have avoided complication by not mentioning that in some cases the assessment is not taken all at once, but is progressive.

has a higher letting and selling value, if it is within reach of canal irrigation.

During the collection of information for settlement "pargana note-books" are prepared very much as they are in the North-Western Provinces. The most important entries are embodied in the Village Statements, which form part of the settlement records.

§ 13.—*Assessment in the* Central Provinces.

The following summary, which well and briefly explains the characteristics of the settlement, is taken from Mr. Stack's "Memorandum." The practice is not unlike that of the Panjáb. The backwardness of cultivation, the large extent of waste, and the generally inaccurate state of the village papers, made the determination of rent-rates an uncertain and difficult business. The rent-rolls were rarely satisfactory guides, and rates decided on after personal enquiry, could only be approximate. In the majority of districts, the plan followed was, to use circle rent-rates and produce-estimates, as a check upon each other. The former were got for the different classes of soil[1], by analysis of the rent-rolls of the villages in the circle, by personal enquiry, by returns of the rents paid in revenue-free estates, and in the later settlements, by comparison with the rates already used elsewhere; reference was made also, in most districts, to an expected rise of rents after settlement. The produce-estimates gave the outturn of each crop upon each kind of soil, the Government share being rarely above one-sixth. From these data the assessment was determined, with allowance for the circumstances and revenue history of the village, and for the other general considerations which universally guide the assessing officer.

To this method, however, there were some notable exceptions. The district of Nimár was settled on the old plan of estimating a lump jama' for the circle, and then distributing it over the villages,

[1] When these were used, there were four: (1) black soil, (2) lighter black soil, (3) light shallow soil more or less mixed with stones, (4) sandy or stony soil of poor quality. In a few districts these were used both under irrigated and unirrigated; in others, irrigated land formed a class by itself. In Nimár, land was assessed on its unirrigated aspect and a water-rate added for irrigation.

and correcting the result till it seemed satisfactory. In Seoni the assessments, arrived at by the aid of rent-rates and produce-estimates, were checked by the general assumption that the circumstances of the district warranted a revenue enhancement of 50 per cent. In Raípur, Biláspur and Hoshangábád, the first step was to calculate a fair average revenue-rate for the district, that is, an average rate of assessment per cultivated acre. This was done by noting the incidence of existing assessments and making allowance for practicable rise of rents. Then the assessments were made with the help of soil-rates, *i.e.*, assumed rent-rates on the different classes of soil.

The jungle produce of the waste allowed to be included in each estate, was regarded as an asset, although a separate assessment for waste was not recorded. It happened, however, that jungle produce had but little value at the time when the first settlements were made; the country had not been opened up by roads and railways; there was consequently no market[2].

The new Revenue Act declares in section 47 that the principle of assessment is to be prescribed by the Chief Commissioner, with the assent of the Governor General, and also the sources of income which are to be taken into consideration in assessing the estate. It further adds, that all land in the mahál is to be taken into account, except revenue-free land and land under some other heads set forth in section 48. So that the Act virtually recognises, as the plan for future settlements, what was adopted at those already in existence.

§ 14.—*Proportion of assets taken by Government as revenue.*

The revenue is the proportion of the "net assets" which Government claims as its own. I could not avoid anticipating the subject when describing the method of assessment, and so I have already, to some extent, indicated what proportion Government takes in

[2] I am informed, however, that this was not always the case. In the Bhandára district, there are cases in which the assessment is high as compared with the cultivated area; and the increase was due to allowance for the value of the produce of the malgúzári waste. Cases, however, have been mentioned to me in which the jungle produce afterwards became so valuable as to far more than cover the entire revenue payment.

each province. But it will be convenient to recapitulate the orders on the subject in a separate paragraph.

The earliest orders fixed the proportion at about two-thirds of the average assets, but it now is almost everywhere fixed at half, and is in practice often less[3].

This, however, does not include the "cesses" for roads, patwáris, schools, or the lambardárs' allowances, which the engagement does not mention[4].

[3] In the North-West Provinces, S. B. Cir. Dep. I, page 9, §§ 22-24, deals with this subject; the proportion is not to be more than 55 per cent., nor less than 45 per cent. without sanction.

In the Panjáb, the following extract from the Administration Report of 1872-73 explains the subject well. It will also be noticed that here there is still allusion to the "gross produce," because in the Panjáb rents are so commonly taken in kind.

"The Sikh system of assessment was that the State, as proprietor-in-chief, took all that it could get, and it *did* take often as much as one-half the gross produce of an estate, besides a multitude of cesses under the name of *rasúm*, *nazarána*, &c., and exorbitant fines on succession." (I notice in the assessment or revenue-rate report for the Alipur tahsil of the Muzaffargarh district (1879), that the Sikhs in this tahsil converted their grain share into cash, by making the cultivators buy back the share at a little over the market rate: the difference was called 'zibta.') "Immediately after the first Sikh War, an assessment by British officers, on the principle of taking one-third of the gross produce, was considered light and liberal. When regular settlements were first introduced, the system in force in the North-Western Provinces was adopted, under which the State's demand was limited to two-thirds of the net assets of an estate, or about one-fourth of the average gross produce. It is now limited to one-half of the net assets, but in practice it is considerably less. It may be said never to exceed one-sixth, is frequently not more than one-eighth, one-tenth, or one-twelfth, and in some tracts where the rainfall is scanty, it is not more than one-fifteenth of the average gross produce, the value of which is calculated on the average price of produce for a period of from twenty to thirty years. In frontier districts especially, the rates are exceptionally light, and in border villages almost nominal; the people being required, in return for their light assessment, to assist actively in the defence of the frontier. The result is that there is a striking difference in the land revenue demand in British territory on the one hand, and in the territory of adjoining Native States on the other; and the new assessments, even where the increment has been considerable, have been collected with the greatest ease."

[4] Such cesses are levied under the authority of the Legislature, and have nothing to do with the land revenue, representing the ancient state rights, and now adjusted by agreement with the proprietors. See Government of India No. 276 (Home Department), dated 26th May 1871, in the official blue-book on Permanent and Temporary Settlements, North-Western Provinces, 1873.

In Oudh it was found that the separate engagement for these cesses was unadvisable, and therefore they are absorbed in the general jamá', which is fixed at about 51¼ per cent.[5] Patwáris' allowances are, however, still treated separately.

In the Panjáb, the rules expressly state, and I have no doubt that it is the same elsewhere, that no mention of *cesses* is to be made in the dárkhwást-malguzári, or tender of engagement, as that is concerned with *land*-revenue (properly so called) only[6].

§ 15.—*The assessment has to be paid uniformly.*

It is a well-known feature of our modern revenue, that besides being always assessed in cash, it is understood that it has to be paid uniformly, good years and bad alike. In some cases the assessment is in itself "rasadi" or progressive; for example, to encourage clearing of waste, or bringing difficult and unproductive land under the plough, it is sometimes allowed that for the first year or first three years (or whatever is fixed) no revenue is to be charged at all; that then for five years (say) half rates are to be charged; and the full rates only to begin with (say) the tenth year. Such progressive assessments are sometimes granted where the increase in a new settlement was very considerable, and it is not deemed expedient to levy the whole increase all at once. But still the revenue, whatever it is, has always to be paid, whether the crop fails or not. If Government altogether pardons or suspends for a time its demand on account of some great flood, famine, or other calamity, that is an exception requiring special report and sanction. The theory is that the revenue being fixed so low as to represent a very moderate share indeed, a sufficient profit is left to the landowner in good years, to enable him to meet the loss on bad years without difficulty[7]. It is, however,

[5] This is really the same thing, since 50 per cent. goes to Land Revenue and 1¼ is credited to the School, Dák, and Road Funds by distribution (Digest, section V, § 26).

[6] Panjáb Rules, C. IV., 29.

[7] Of late years, it has been admitted, in some exceptional cases, that a departure from this plan is necessary. Thus, in the Panjáb, in the district of Montgomery, in

questionable whether this result is in fact, as a rule, attained. In a good year the cultivator buys more cattle or some silver for his wife or child, or carries out a betrothal or a wedding which has been deferred in hope of a good season; in a bad year he gets into debt for his instalment. It is true, in some cases, that the periodical and inexorable demand for a cash payment on a peasantry which do not know what providence and saving mean, throws them helplessly on to the village money-lender, who by his exorbitant rate of interest so keeps up his account that the peasant rarely or never clears it off, and that in bad cases the peasant becomes the slave of the money-lender, and his land is sold or hopelessly mortgaged. On the other hand, the thrifty peasantry are perhaps as numerous as the unthrifty. The question of the effect of a fixed money settlement on the condition of the peasantry is, however, obviously too large a question to be discussed in a Manual of this kind.

§ 16.—*The tender and acceptance of the Revenue Agreement.*

I have to add to this section a few remarks as to the engagement for the revenue. The form in which this is done is, that a "darkhwást-málguzári" is prepared[8], which states on the part of

which, owing to the scarcity of rainfall, cultivation is dependent upon *rainfall* or on the uncertain irrigation of inundation canals, a new system of assessment has been experimentally introduced. Instead of fixed assessment, demandable in good and bad years alike, and whether water is plentiful or scarce, the bulk of the income is taken in the form of differential crop rates, leviable after measurement in the event of the crop ripening. The result is an estimated increase of revenue, while the agriculturist is relieved of the necessity of paying revenue when his crop fails. In six districts also, forming the south-west corner of the Panjáb, with a rainfall of not more than 12 inches per annum (except in one case), and in which the crops depend on wells, inundation-canals, and the hot season floods of rivers, fluctuating assessments have also been introduced and are working with some success. (See Selections Rec. Panjáb Government, New Series, No. XVII of 1880—Fluctuating assessments).

[8] The form of this in North-Western Provinces may be seen in S. B. Cir. Dep. I, sec. 28. It contains no allusion to cesses, but engages to pay revenue on groves left free, if they are at any time cut down. Panjáb (Rules, C. IV, 29-30) also gives the form for that province, and directs that it shall contain no allusion to cesses. The order accepting this engagement states that, subject to acceptance by the Local Government, it will take effect from the kharíf following, and is payable in such and such instalments.

the persons who engage to pay the revenue, the terms on which (it has been previously decided) they are to engage. The engagees sign this paper, subject, however, to its approval by Government (as presently noticed), and they are then bound by the assessment (whether fixed or progressive) for the whole term for which the settlement holds good. This is usually for 30 years[9], a period sufficient to give the proprietors the benefit of their industry and capital expenditure, and not long enough to stereotype hardships or mistakes of policy.

In Oudh this document is spoken of as a "Kabúliyat," but though the form is somewhat different, the principle is the same. Oudh kabúliyats specify the arrangements to be made for cases of alluvion and diluvion, and stipulate that patwáris' allowances may be levied, and that chaukidárs may be provided for at the expense of the landowners[10].

In the Central Provinces the Act[1] speaks of an "acceptance" to be signed and delivered by the revenue-payer.

Government has a general power of revision of the assessment till it has confirmed it, so that the darkhwást, though binding the signer, is open to be modified by Government. This is provided for in the different Acts, as follows :—

In the **North-West Provinces** Act there is simply a power given to the Local Government to revise the assessment at any time before confirmation[2].

In **Oudh**, as the Chief Commissioner sanctions subject to the confirmation of the Governor General, he can revise at any time before that confirmation is received[3].

In the **Panjab** the Act is still more specific: it enables the Government to revise the rates of assessment, the term of settlement, or the conditions under which the settlement has been

[9] I shall not here say anything about the North-Western Provinces' proposal to make the assessment permanent. I have sufficiently indicated the scope of the correspondence in the "General view." (Book I, Chap. IV.)

[10] Digest, sections IV, § 29.

[1] Act XVIII of 1881, sec. 54.

[2] North-Western Provinces Act, sec. 92.

[3] Oudh Act, sec. 45.

engaged for[4]. This plan holds back the power to correct errors till the soundness of the Settlement Officer's proceedings has been fully considered. Until such revision or new offer is actually made, the one approved by the Financial Commissioner holds good.

The **Central Provinces** Act allows of revision at any time before confirmation by the Governor General[5]. Every mahál must be assessed in a separate and definite sum, and the Chief Commissioner can reduce this at any time[6] within ten years from the date on which the assessment takes effect.

§ 17. *The persons who engage for the revenue*—**North-West Provinces.**

Next we have briefly to enquire who are the persons who enter into and sign these engagement deeds.

The settlement is to be made with the proprietor or person in proprietary possession of the estate. Where there are joint proprietors, a joint settlement is made with all, or "with the representatives (styled lambardárs) elected according to the custom of the mahál[7]."

If the assessment is not accepted, then the estate can be farmed or held under direct management for a time not exceeding fifteen years, and the owner being thus kept out of the management, gets a (málikána) allowance out of the profits of the estate, of not less than 5, nor more than 15 per cent. on the assessment[8], and is allowed to continue to hold his own "sír," that is, land always retained for his own cultivation, but as a tenant on a rent, during the period of his exclusion from the estate. The Act provides what is to be done on the expiry of the period: it is unnecessary, however, to notice the subject further here[9].

[4] Panjáb Act, sections 18 and 30-34.

[5] Central Provinces Act, sections 53 and 56, and see section 18.

[6] *Id.*, sec. 46.

[7] Act XIX of 1873, secs. 43-44.

[8] *Id.*, sec. 48.

[9] In estates where there are *shares*, if there are some sharers that refuse and some that agree, the shares of the recusants are to be first offered to the others (sec. 49).

Then the question of coincident proprietary rights in the same estate has to be dealt with. This the reader will readily understand, if he has remembered what was said in the "general view" about the difficulties which arose where one person had been selected as proprietor among several who had very similar claims, as, for example, when a "taluqdár" was found to be in a position which made it necessary to declare him proprietor over the heads of the original village landowners.

When there are thus several persons possessing "separate, heritable and transferable proprietary interests" in the estate, then the Settlement Officer is to determine, under the rules in force at the time, which of the persons is to be admitted to engage; and he then makes provision for securing the rights of the others, deciding the share of the profits to which they are entitled. The inferior or original proprietor of the village was more commonly selected (except in the case of great chiefships) in the North-West Provinces settlements. In that case, the settlement with the inferior engages that he is to pay an amont of revenue which includes the sum to be received by the superior. This sum is paid to the superior through the treasury, and in fact he becomes a pensioner on the land merely. In cases where the settlement is with the superior, a sub-settlement may be (and always is) made with the inferior "on behalf of the superior," by which the inferior becomes bound to pay to the superior an amount equal to the Government revenue, together with the superior's own dues (and no more), so that both parties are equally protected[10]. Provisions follow, as to what is to be done in case either inferior or superior refuses to engage: these I need not describe. Lastly, there are cases of persons having proprietary rights, but not such as to entitle them to a settlement; the Act provides[1] for the Settlement Officer making arrangements for securing them in the "possession

[10] Act XIX of 1873, sections 53-4-5. The reader will here trace the provisions which were found so much wanted in Bengal, and were introduced in 1822. The sub-settlement is also, as will presently appear, a marked feature in the Oudh settlement procedure.

[1] *Id.*, sec. 56.

of their existing rights, or an equivalent thereto." It is not necessary to go into this subject.

§ 18.—*Procedure in the* Panjab.

Chapter III of the Revenue Act deals with the subject.

The settlement is to be made with the owner or with several owners, through a representative. The representative—the headman or "lambardár"—is appointed under the rules which the Act provides to be made.

The existence of coincident proprietary rights in the same estate, which had to be dealt with in some detail in the North-West Provinces Act, is only occasionally found in the Panjáb; the whole subject is briefly disposed of by leaving it to the Financial Commissioner to direct which class is to be settled with in any particular case, and by providing that if one class refuses, the other is to be offered the engagement. The Settlement Officer having announced the assessment he proposes, the "darkhwásts" are drawn up just as in the North-Western Provinces.

§ 19.—*Procedure in* Oudh.

As the reader is prepared to expect, having read my sketch of the history of the taluqdárs, the law provides that in taluqdári estates the settlement is to be made with the taluqdár, and in other estates with the proprietors[2]. If in an estate (not being a regular taluqdári estate) there should be found two classes of proprietors, superior and inferior, the Chief Commissioner of Oudh directs which is to be admitted to engage.

All the provisions in respect of joint estates are practically the same as in the North-West Provinces Act. The Oudh Act, however, contains further provisions[3] necessitated by the fact that in a taluqdári estate, although the estate is one, still the separate villages comprised in it need not be jointly responsible for the whole revenue. So the assessment due on each village or part of a village, as well as the total assessment, has to be declared.

[2] Act XVII of 1876, section 26.

[3] *Id.*, sec. 29, &c.

If a taluqdár refuses[4] to engage, a report is made to the Chief Commissioner, who hears the taluqdár's reasons; and if his objection proves unreasonable, he may be excluded from settlement of the estate *or* any *part* of it, for a term not exceeding fifteen years. A taluqdár cannot, however, be excluded from his *whole* taluqa without the sanction of the Governor General in Council. The estate (or the part of it) in such cases is farmed, but the farm is to be offered to a sub-proprietor of the taluqdár's, if there is one, enjoying a sub-settlement (of which presently). As usual, provision is made for a money allowance to an excluded taluqdár.

In case of refusal by proprietors, other than taluqdárs or sharers in a community of proprietors, the provisions do not materially differ from those described in the North-West Provinces: the excluded proprietor retains his own (or sír) lands as an occupancy tenant "at one-fourth less rates than would have been paid by a tenant-at-will."

§ 20.—*Sub-settlements in Oudh.*

At this point it is necessary to allude to sub-settlements. The subject is of characteristic importance in Oudh.

In the North-West Provinces, and the Panjáb, the reader will have observed that a few general provisions on the subject were sufficient, since the cases in which there happened to be several persons in coincident proprietary connection with an estate,—*i.e.*, where there was a superior and inferior proprietor,—are few and unimportant.

In Oudh, however, every taluqdár has obtained his place as proprietor over the heads of the original village landholders[5].

This grant of proprietary right was not intended to extinguish the proprietary rights of the communities or individuals who held the villages. But the degree in which the rights of the village owners were found to have survived, was not uniform; and a distinction became necessary between those whose position was

[4] Act XVII of 1876, sec. 32.
[5] See also the section on Oudh Tenures, *post*.

such as to entitle them to be recorded at settlement as *under-proprietors but to have no sub-settlement,* and those who were under-proprietors in such a position that they *had a right* to a sub-settlement. The rules stating who were entitled to a sub-settlement and what different terms applied to each different class of them, had been already legalised and republished in Act XXVI of 1866, before the Oudh Revenue Act was passed. There is no object now in giving details, because all this was done, once for all, at the settlements many years ago, and will never have to be done again.

There can be no doubt now who is to engage, and whether a village is included in a taluqa or not; whether it is entitled to a sub-settlement, or whether it is a village in single tenure by itself. It was a rule in Oudh that the Settlement Court should record a formal decree for every individual village, deciding whether it was in one position or the other[6].

The Act, however, provides that the Settlement Officer is to determine the "rent[7]" of all under-proprietors (whether entitled to a sub-settlement or not) and even of persons who hold *heritable* but *not transferable* leases at a rate not specially fixed by agreement. So that it comes to this, that persons entitled to a sub-settlement differ in position from those who are not so entitled, to this extent, that their tenures are to a greater or less degree more advantageous than the other[8], and that certain special provisions exist as to the validity of incumbrances on the sale of their right, in execution of decree[9].

Where the sub-proprietors or others whose "rent" is fixed under this section, are a joint body, there is the same joint and

[6] Digest, section IV, § 20.

[7] Act XVII of 1876, section 40. In Oudh (by the definition in the Rent Act) "Rent" is applied to *all* payments on account of the use and occupation of land, *except* payment to *Government*, when it is called Revenue.

[8] And they in common with *all* under-proprietors—sír-holders, birtyas, &c.,—are not liable to distraint, but can only be sued for arrears in the Revenue Courts. See Act XIX of 1868, section 47.

[9] See Act XIX of 1868, sections 124, 127, &c. The nature of the sub-proprietary right will be more fully explained in the section on Tenures.

several liability to the taluqdár, that there would have been to Government.

§ 21.—*Procedure in the* Central Provinces.

The engagement is made with the proprietor or with the whole body of proprietors (through their representative "lambardar") of the mahál. A mortgagee in possession is settled with in lieu of the proprietor who has mortgaged his land[10]. If there are inferior and superior proprietors, both interested *in the whole estate*, the Act provides[1] that the Chief Commissioner is to determine with whom the settlement shall be made, and how the proprietary profits are to be shared. If the superior is settled with, a sub-settlement must be made with the inferior (through representatives called "sub-lambardárs") on behalf of the superiors[2]. If the settlement is made with the inferior, the Settlement Officer determines whether the dues of the superior are to be paid to him direct by the inferiors, or through the Government treasury[3].

It will be observed that the Act[4] draws a distinction as regards sub-settlements, between estates where there are two classes of proprietors co-existing, *i.e.*, each with a certain interest covering the whole estate (as, *e.g.*, a málguzár as superior owner, and the original village owners who have yet maintained their position as inferior proprietors over the whole), and those where there is only one such class recognised as the general proprietor of the estate, but still certain individuals here and there are málik maqbúza or proprietors of their own holdings. The term "málik maqbúza" does not include inferior proprietor[5].

A peculiar provision[6] in these provinces enables the Settlement Officer to make an order in writing, that a proprietor who fails to

[10] Section 49, last clause. This is so in all provinces.

[1] *Id.*, section 49.

[2] *Id.*, section 50.

[3] *Id.*, section 51.

[4] *Id.*, section 50.

[5] See the Act; definition clause (sec. 4 No. 10). A sub-settlement *may* be made (when necessary) for málik maqbúzas (Act, section 64).

[6] *Id.*, section 55.

sign his kabúliyat, or to signify his refusal within a reasonable time, shall be deemed to have accepted.

In case of a refusal to engage, if there is only one class of proprietor, the estate may be held direct by Government, or settled with any one else; but the proprietors cannot be excluded beyond a term of thirty years[7]. If the proprietors are a body, and some refuse, the settlement of the whole may be offered to the sharers who do not refuse; and there are special provisions for making (in certain cases) the lands of the recusants into a separate estate, which is settled separately, the settlement being offered first to those sharers in the original estate who were willing to accept the assessment.

Excluded proprietors are (as usual) allowed a "málikána" of not less than 5, or more than 10, per cent., and to retain, but as occupancy tenants, their own sír land[8].

In estates with two classes of proprietors over the whole, if one refuses to engage, the settlement is offered to the other; the Act contains[9] provisions for the different conditions which arise, according as all or some refuse.

SECTION V.—THE CLOSE OF THE SETTLEMENT.

Before describing the records which are the result of the settlement, I may briefly state how, legally speaking, a settlement comes to an end. All powers that can be exercised by officers in respect of certain matters *while a settlement is going on*, of course come to an end when the settlement is (legally speaking) closed.

In the North-Western Provinces it is conveniently and simply provided[10] that the settlement goes on till "another notification declaring Settlement Operations closed" is issued.

In the Oudh Act, the provision is identical[1]. So also in the Central Provinces[2].

[7] *Id.*, section 57.
[8] *Id.*, sections 61, 62.
[9] *Id.*, section 59.
[10] North-Western Provinces Act, section 37.
[1] Oudh Act, section 18.
[2] Central Provinces Act, section 39.

In the Panjáb the Revenue Act says[8] that a settlement continues in progress "till it is sanctioned by the Local Government." And it is "sanctioned" when either the "Record of Rights," or the assessment, or both, are sanctioned. Notwithstanding this, the Act enables the Local Government, on "report of the Financial Commissioner that the operations of the settlement are complete," to direct that the records be handed over to the Deputy Commissioner, and to put an end to the special powers of Settlement Officers.

SECTION VI.—THE PERMANENT RECORDS PREPARED AT SETTLEMENT.

§ 1.—*Judicial powers of Settlement Officers.*

It is observed in Thomason's "Directions" that the Operations of Settlement may be divided under two great heads, one ***fiscal***, the other *judicial*. And the division is quite characteristic of the "Regulation VII" or North-West System; it is not traceable in the Permanent Settlement or in a Raiyatwári Settlement.

The survey, which is preliminary, obviously concerns both branches of the work equally:—you neither can assess revenue according to the modern practice, nor determine rights, if you do not know the boundaries and the area of the land you are dealing with.

The assessment described in the preceding section, is the *fiscal* part.

Under the system we are engaged in studying, the *judicial* part is no less important; for the theory is, that Government not only undertakes to fix with moderation its own share in the profits of the land, but confers a proprietary right on the person or body whom it considers to be entitled thereto. Where the proprietor is a community or jointly responsible body, the shares and the method of dividing the burdens and profits of the estate among the co-parceners have to be determined and recorded; and customs regarding succession, and genealogical trees showing descent and relationship, may also have an important bearing on landed rights.

[8] Panjáb Act, section 17.

Not only so, but in many cases, owing to the superposition of proprietary rights, there are ancient and now secondary or subordinate interests in land, to be protected by record. Not only the security of the revenue, but the well-being of the country, is dependent on doing justice to all these claims and interests.

It is true that the ordinary Courts of Civil Justice are, in all cases, open to enable any claimant to obtain his just rights, but the North-Western Provinces Revenue system has always held this to be an insufficient security. For, in applying such a remedy, it is the person claimant who must take the initiative, and bear the burden of proof. But the rights that stand in special need of support, are just those which have been to a greater or less extent overborne by the more powerful and wealthy (who now stand forth in the superior proprietary position); in other words, they are those of the classes least able to take the initiative. Not only so, but the Courts themselves are (or rather *were* in former days) not provided with any means of judging such questions properly. The rights of villagers and the effect of village custom are not easily proved in Court: they are found out by friendly enquiry in the village itself.

If the Settlement Officer takes the initiative, the difficulty is, to some extent at least, obviated; he is on the spot, or near at hand; he enquires and ascertains what is the real state of the case. If his summary enquiry does not result in a satisfactory adjustment of all differences, he can, at least, point out clearly to claimants what they have to establish, and how they are to establish it, so that a more perfect examination of evidence and formal decision may be had in a "Regular Suit" heard under the procedure of the Civil Courts. Consequently, the Settlement Officer is required to record all rights which are ascertained on enquiry to exist; those which are disputed must of course either be supported by the production of a legal decision of court, or cannot be admitted to record.

In the old settlements, not only was the Settlement Officer empowered to make a record, he was also made the judge of land-causes of whatever description, and this enabled him practically to

make his record perfect, and to include not only rights that were not disputed, but those which were established by his own decrees as a law-court. As rights have become more defined, and the people better able to appreciate and assert them it has become less and less necessary to interfere with the jurisdiction of the ordinary courts.

The ordinary powers, therefore, of the Settlement Officer are those which are sufficient to enable him to get hold of all documentary and verbal evidence he requires, and in some cases to decide disputes on the basis of possession, or even on the merits by arbitration[4].

The other powers which he *may* have, and usually has in all provinces but the North-Western Provinces, are Civil Court powers in land cases of all kinds.

In the North-West Provinces where the districts have long been settled under a well-established system, it was thought sufficient to give the Settlement Officer the ordinary powers alluded to[5].

The Settlement Officer decides always on the ground of possession, referring claimants out of possession to the Civil Court. If it is a question of shares, it is settled according to the village custom. The Settlement Officer also decides rent questions that may arise in connection with the preparation of the "jamabandi." Power to refer to arbitration without consent of the parties is given[6].

[4] North-Western Provinces Act, sections 40-42, 238, 240; and Oudh Act, sections 181, 191 and 24 and 25; Central Provinces Act, section 30, and chapter VI; Panjáb Act, sections 23, 24, 64, 65, &c.

[5] Revenue Act, Sections 238-241; also 62, &c. At first sight this seems to militate against what was before said about the insufficiency of a remedy in the Civil Court. But that was perfectly true when the first North-West settlements were made, and still holds good for the other provinces to a great extent. It is only under this modern Act of the North-West Provinces that, the enquiries having long ago been completed, and the people being well aware (by this time) of their rights, the powers of the Settlement Officer are now restricted to what is really necessary.

[6] North-Western Provinces Act, section 220, and the procedure is laid down in sections 212-18. The Oudh Act requires consent for reference to arbitration. The Civil Provinces Act also only allows arbitration to be applied as it is in the Civil Procedure Code.

§ 2.—*Powers as Civil Courts in land cases.*

In the other provinces, as I said, the law allows of the transfer of the hearing of all land cases, while the settlement is in progress, from the Ordinary Civil Courts to the Settlement Officers specially invested with Civil Courts' powers. Such powers, of course, only last till the settlement is at an end.

In **Oudh** the Act[7] empowers the Government to confer on Settlement Officers the powers of a Civil Court, with reference to suits regarding land paying revenue; while those powers exist, the jurisdiction of the ordinary Courts is barred.

In the **Panjab,** where the backward state of the districts made very specially applicable, those considerations with which I headed this section, the settlement notification confers the "judicial powers" which the officers are to exercise[8]. These special powers are not mentioned in the Revenue Act, but are conferred under the Panjáb Courts Act[9]; they allow of the Settlement Officer being empowered to try all (or any class of) "suits and appeals relating to land, or the rent, revenue, or produce of such land," arising in the local area affected by such notification. The jurisdiction of the ordinary Courts is barred.

The advantage of this system is, that while the Settlement Officer is, in his ordinary capacity, enquiring, recording, and finding out all about the people and their rights, if he finds the matter impossible to decide by arbitration or otherwise, without a suit, he can refer the parties to a regular civil suit, and then himself hear the matter more fully and formally, and decide it, subject, of course, to such appeal as the law allows.

[7] Section 20.

[8] Act XXXIII of 1871, section 11.

[9] Act XVII of 1877, section 49. In the Panjáb the powers usually are to hear suits and appeals—

(1) under the Tenancy Act;

(2) to alter or cancel any entry in the register of names of proprietors of revenue-paying estates;

(3) under section 9 of the Specific Relief Act I of 1877, *viz.*, summary suits for remedy against being dispossessed of land, for recovery of possession only;

(4) for declaration of title in land, or the rent, revenue, or produce of land, brought by parties in possession of the rights claimed.

The student will understand that the Civil Court powers are in addition to the ordinary powers of enquiry, record and determining the question of possession, which are common to all provinces.

Central Provinces.—The Act provides[10] that a Settlement Officer may be vested with all or any of the powers of a Deputy Commissioner, regarding such class of cases as may be directed. And the Settlement Officer may be invested with certain Civil Court powers, and the Chief Settlement Officer with those of a Court of a Deputy Commissioner, to hear (during the progress of settlement) all land and rent suits as defined in section 33; and the Government may also direct either that the Civil Courts shall cease to have jurisdiction in such cases, or shall have concurrent jurisdiction. Decrees and orders of Settlement Officers with powers of Civil Courts, unless specially provided to lie to the Chief Settlement Officer or otherwise, lie not under the Revenue Act, but as ordinary civil appeals.

§ 3.—*A list of the Records of Settlement.*

The Settlement Records will then, as a whole, consist (1) of the maps and indexes; (2) the records of the revenue engagements; and (3) the records of rights. The reader will easily follow for himself the class to which the records belong in the following general list:

The documents relating to the survey and assessment are—

The **Thakbast** or boundary maps and proceedings showing how the boundaries were settled, &c.[1]

No explanation of this is necessary.

This is not mentioned as part of the North-Western Provinces Settlement Record, because this part of the business was long ago completed before the settlements now in force were made.

(2) The **Shajra** or village map.

(3) The **Khasra,** or index register to the map. It is a list showing by numbers all the fields and their areas, measurement,

[10] Central Provinces Act, secs. 30–38.

[1] Panjáb Act, section 14, Rules (head Settlement), section III, § 12.

who owns, what cultivators he employs, what crops, what sort of soil, what trees are on the land, &c.

Neither the Panjáb nor the North-West Provinces now require an abstract of this, called a "tírij" or "muntakhib asámíwár;" but in the earlier settlements of these provinces, and also the Panjáb, the Central Provinces and Oudh, this abstract was prepared. It showed the owners and the fields each holds, grouped together according to names. In the Khasra, for instance, one man may hold field No. 1, and the same man's name may not occur again till we come to No. 50, and again at No. 139, and so on. The "muntakhib" starts with the names of holders, and groups under each man's name all the different fields he holds, and adds, in a few columns, the *chief* items of information shown in the more numerous columns of the khasra.

Subordinate to the khasra may be a statement regarding irrigation by wells, canals, &c.

(4) "**The village statements.**"—These are statements showing concisely all the facts and details ascertained by the Settlement Officer and noted in his "pargana note-book" as bearing on the assessments[2]. In the Panjáb they also contain the Settlement Officer's general reasons for the assessment of the village.

(5) The "**Darkhwast malguzari,**" or the "kabúliyat," or engagement to pay revenue.

(6) The **Khewat**[3]. This document is a record of the shares and revenue responsibility of each owner or member of the proprietary body.

In the North-Western Provices and Oudh, tenants have no place in this: their holdings and the rent they pay are shown by

[2] In Oudh (Digest V, section 56), the jamabandi or rent-roll showing rents paid, *as they were at time* of survey, is kept still. In the other provinces, the use of this is confined to the Rent or Revenue-rate Report. Oudh also requires certain other statements which, in the other provinces, are confined to the "Rent or Revenue-rate Report," to be placed on the Settlement Record itself.

[3] The term *khewat* properly means share of burden or liability; it originated in Bengal, where a certain contribution had to be levied on rent-free lands in order to make up a deficit, *i.e.*, when the assessed lands could not make up their total revenue. —(*Wilson's Glossary.*)

the jamabandi (No. 7). In former days, besides the Khewat, a "khatauni" was used, which was, in fact, another abstract of the khasra, grouped according to holdings, but having a column (and herein lay its usefulness) showing how each holding was cultivated, whether by tenants, and if so, whether they had occupancy rights or not. In the North-West Provinces at present the khatauni is not maintained, as information is contained in the jamabandi.

In the Panjáb, a combined form, or khewat-khatauni, is used, which shows *both* owners and tenants, and is a record of occupancy and liabilities.

In the Panjáb, various appendices to the khewat are prescribed or allowed. They are (1) the statements of revenue-free holdings; (2) a list showing the shares and holdings of the present proprietors, and how these interests were acquired, accompanied, where necessary, by a genealogical tree; and (3) a statement of rights in wells.

In the Panjáb some of these documents have great value. The first is of no great importance; the second, however, is of very great interest, in villages held by persons descended from a common ancestor, or otherwise closely connected by blood. The genealogical tree in such cases is an important document, and on its correctness many questions of inheritance and succession may turn[4].

The third statement is necessitated by the valuable character of the irrigation from wells, and by the fact that the shares in the ownership of the well itself, are not always the same as the shares on which the land round the well is owned.

(7) The **Jamabandi**—Showing the occupancy and rents of tenants: this is not used in the Panjáb, where the combined khewat-khatauni is employed[5].

[4] Rules (head Settlement) III, § 25.

[5] The student will not confuse *this* "jamabandi" with the document called by the same name, and made use of in preparing the "Revenue-rate Report." That shows the rents *as* they *are stated to be at the time* of the survey, before the new assessment is made out. In the Settlement Record jamabandi, rents are entered according to the arrangements agreed upon by the parties, unless there has been a *decree*, according to which the rent is entered; if there is a case pending the place is left blank (see Oudh Digest, section V, § 69). For North-West Provinces see Act, sections 68-72; and S. B. Cir. Dep. I., page 13.

(8) The **Wajib-ul-'arz.**—This is the village administration paper: it contains a specification of village customs, rules of management, and everything affecting the government of the estate, the distribution of profits, irrigation, and rights in the waste.

I shall not here go into any detail, as it would take up too much space, and the student can readily refer either to the Panjáb[6] Revenue Rules, or to the North-West Provinces Circulars[7] which give a complete account, and show that the principle is the same in all provinces.

(9) The **Rubakar-akhir**, or "final proceeding," an abstract of the proceedings of settlement.

It gives a brief narrative of the settlement operations, the period occupied by each stage of them, explains what officers carried them out, the year when the assessments took effect, the year for which the *khewat* was prepared[8] and the date on which the *settlement misl* was complete[9]. The Panjáb[10] adds a statement of the Settlement Officer's judicial decisions.

(10) The English "**Settlement Report**" for the whole district. This should here also be mentioned, although it does not form part of the record deposited in the Collector's office, and which comprises the documents above described, and all in the vernacular. Every one is familiar with these reports, many of which are of great value and interest, giving information on the history, customs, geography, and natural products of the district, as well as an account of the settlement proceedings[1].

[6] See Rules, head C. III, 26.

[7] See S. B. Cir. Dep. I, § 51, page 15; see also Panjáb Rules (head Settlement), III, § 33.

[8] This will be noted afterwards; the khewat shows the rights as they existed on at a certain date: of course sales, transfers by inheritance, and so forth, modify it afterwards.

[9] S. B. Cir., Dep. I, § 55 (page 17).

[10] Rules (head Settlement) III, 39.

[1] An officer desiring to know the district in which he is employed (and this applies equally to Forest Officers) should study the *Settlement Report* as his first step. Some reports are full of the most valuable historical, sociological, and other information. Among the best may be named—Elliott's Hoshangabad; McConaghey's and Smeaton's Mainpuri; Reid's Azimgarh; Forsyth's Nimár; Benett's Gonda. Many others, however, might be mentioned as first rate.

§ 4.—*Provisions of the Acts regarding Records.*

I have thought it simplest to give this list of records, which may actually be found in every District Revenue Office, before speaking of the requirements of the Revenue Acts in respect of records.

The main records that require to be prescribed by legislative authority, as being *primá facie* evidence, in a suit, of the facts they record, are the documents which constitute the *Record of Rights.*

The **North-Western Provinces** Act only alludes specifically to this part of the general records of settlement[2]. It therefore includes the khewat (*viz.*, a record of (*a*) all co-sharers; (*b*) all other persons having heritable and transferable interest or receiving rent; (*c*) the nature and extent of the interest; (*d*) rent-free holders) and the jamabandi. The wájib-ul-'arz may also be added, since the subjects enumerated in section 65 will find a place in that important document. Rules may be made (under section (257) for the preparation of the records.

The **Panjab** Act[3] describes, under the head of Record of Rights, not only the khewat (which it treats as a simple record of owners, supposing the tenant part of it to be shown in the khasra) and the wájib-ul-'arz; but also includes the maps, the khasra, the engagement paper, and the rubakár-ákhír[4] which hardly

[2] See Act, sections 62-65; and S. B. Cir. Rules for Settlement Officers, Dep. I, Rule 30, page 10. The entire misl or settlement record of an estate, in these provinces, is bound up in two volumes:

I. The record of rights.

II. The village map, khasra, and other papers not included in what is technically the record of rights.

[3] Section 14.

[4] It will be convenient here to quote the Panjáb Act on this subject: the record is prescribed to consist of—

(1) "Maps and measurement papers showing the boundaries of the village or place in respect of which the settlement is to be made, and the fields into which it is divided. (Thákbast proceedings and Shajra.)

(2) "A statement of the occupiers and owners of the field specified in the said maps, and of the lands occupied or owned by them, and of the terms on which they are so owned or occupied. (Khasra.)

(3) "A tender on behalf of the person or persons settled with to engage for the payment of the revenue during the term for which the settlement is made. (Darkhwást malguzárí.)

can be called Records of Rights, though they may have an important bearing on the subject.

In **Oudh** the Act leaves it to the Local Government to determine what papers shall constitute the record of rights, and what facts shall be recorded and shown in them[5].

In the **Central Provinces** the record of rights is expressly defined[6] to include the *supplementary* record of rights, that was made in some cases (before the Act) in connection with tenant right, which will be afterwards alluded to.

The Act is particularly clear on the subject. It defines all the subjects which the Settlement Officer has to investigate and decide. A record is to be made for every mahál or a group of mahâls: and it is to notice the result of the enquiries made on the points described in the sections 68-78, and any other matters which the Chief Commissioner may direct to be recorded. The Chief Commissioner is also empowered to prescribe the language and form of record and the papers of which it shall consist.

Records of former settlements are treated as records made under the Act. But there are certain exceptional provisions regarding certain rights, for which the Act may be consulted[7].

(4) "A statement of the shares or holdings of the different persons settled with, and of the amount of revenue for which, as between each other, they are to be responsible; and a statement of persons holding lands free of revenue and of the lands so held. (Khewat.)

(5) "A statement of the terms on which the persons settled with agree to pay the revenue assessed, and of the customs of the village or place in respect of which the settlement is made; such statement shall be so arranged as to distinguish such customs as regulate—

(*a*) "the relations of the persons settled with to the Government;

(*b*) "the relations of the persons settled with towards one another;

(*c*) "the relations of the persons settled with the other persons. (Wajib-ul-'arz.)

(6) "An abstract of the proceedings at the settlement, which shall contain a statement of all judicial decisions passed by the Settlement Officer in the course of the settlement." (Rubakár-ákhír.)

[5] Oudh Act, section 19.

[6] Central Provinces Act, section 4. See also sections 68-80.

[7] See section 86 and sections 88, 89.

It is to be borne in mind that records of rights and existing holdings, shares, &c., can only represent the facts as they were at a given date. Such rights alter by partition, the effect of death, and inheritance, as well as by sales and transfers. Provision is made for fixing the *date* to which the facts recorded have reference. Changes occurring subsequently are recorded in proper registers; the original record of rights is never itself altered[8].

The papers, when fair-copied and properly attested, are made over to the district officer.

§ 5.—*Of the attestation and legal force of the records.*

The attestation of the papers is a matter of importance, and original documents professing to be settlement records, if produced without such attestation, may be at once suspected.

In the **North-Western Provinces**, the details are left to the discretion of the Settlement Officer[9]. I have found no specific rules on the subject in **Oudh**. Doubtless the practice is the same as in the North-Western Provinces.

In the **Panjab** the papers are attested by the patwári, the munsarim, and the Deputy Superintendent and Superintendent of Settlement. The boundary maps are signed by the patwáris and the headmen of the villages concerned. The wájib-ul-'arz is signed also by the whole of the proprietors interested. The Settlement Officer is not directed to sign the record of rights, but he is responsible for its correctness.

The "Final Rubakár or Proceeding" is signed by the Settlement Officer himself, as in fact a signature attesting the entire record[10].

It is the practice to bind the various papers into a volume (or more than one): the maps are placed in a pocket in the cover. The Superintendent signs each leaf of the record. The settlement volume is often bound in red leather, and the people speak of it as the "Lál kitáb."

[8] See S. B. Cir. Dep. I, section 31, page 10; Oudh Digest, sec. V, § 62.
[9] S. B. Cir. Dep. I. Rules for Settlement Officers, § 40.
[10] Panjáb Rules (Settlement), VII, 47.

§ 6.—*Legal effect of entries.*

In all the Provinces, entries in the settlement record are legally presumed to be a correct statement of fact[1], *i. e.*, they hold good till the contrary is proved by the party asserting it.

Entries in the record of rights can, however, be contested in a regular suit.

§ 7.—*Alteration of Records.*

The **Panjab** Act contains some special provisions. The record cannot be revised till a new settlement[2], and even then can only be revised by the entry of facts which have occurred since the date when all the judicial cases at settlement were decided, or by alterations which all the parties concur in: or by making such alterations as new maps and measurements made by order of Government, necessitate.

The **North-West Provinces** Act does not allow of the alteration of the record, except upon a regular notification ordering it; errors may be corrected, however, by consent[3].

The **Oudh** law is similar[4].

The **Central Provinces** law goes more into detail[5]. Errors may be corrected by consent, or in pursuance of a suit to correct, or that being founded on a decree or order it does not correctly represent such decree or order, or the decree or order has been reversed or modified on appeal, &c. In these provinces, also, there are special provisions enabling Government to enforce any "custom," "condition," or "specified rule" duly entered in a record of rights. Any settlement or sub-settlement holder who hereafter shall violate or neglect any such rule, custom, or condition is made liable to penalty. The penalty order can be questioned by a suit against Government.

[1] North-West Provinces Act, section 91; Oudh Act, section 17; Panjáb Act, section 16; Central Provinces Act, section 82.

[2] Panjab Act, section 19.

[3] North-Western Provinces Act, section 94.

[4] Oudh Act, section 57.

[5] Central Provinces Act, sections 120-25.

CHAPTER II.

THE LAND TENURES OF UPPER INDIA.

SECTION I.—THE TENURES OF THE NORTH-WESTERN PROVINCES.

§ 1.—*Introductory.*

I should make the preliminary observation that I am in this Section speaking only of the ordinary tenures of the plains. Special districts like Kumáon and Jaunsar Báwar are separately treated of in the appendix.

The tenures (using that term in a somewhat strict sense) that the section is concerned with are of two classes[1].

The first is where Government has granted or recognised a superior right in a given estate. There are then two classes having a proprietary interest in the soil,—the superior proprietor, and the village owners who are the "sub," or "inferior," or "under"-proprietors.

This tenure (taluqdárí), which we shall find so strongly developed in Oudh, is only occasional in the North-Western Provinces, and even there, the settlement aimed at taking the engagement from the actual soil-owners, and left the superior with the proprietary right in his own "sír" or nánkár land, and his right to his taluqdárí due or his revenue assignment, whatever it might be, which he receives through the Government treasury. But

[1] See the General view of Tenures in India, page 42, *ante*. I deal here with two classes only, for there is little occasion to mention a third, where Government itself is the sole tenure-holder, having become proprietor by escheat or forfeiture; or a fourth, where the holder is a revenue-free grantee of land of which he is sole proprietor. If an assignment or grant of the revenue of a given area is made to a person who is not proprietor, he may be only a pensioner; but in such cases the grantee usually has the right to all unoccupied land, and the right to take in hand any lands which are ownerless, and so he has, or grows into, a certain interest in the soil itself, and the estate may then be a tenure of the class mentioned in the text.

there are cases of jágirs and large estates of a more dignified character, where the settlement is with the superior, and his over-lordship on the estate is recognised.

The second is where the Government deals with an entire body of cultivators occupying a known local area. It respects the rights of each member; but it deals not with each individual, as in the raiyatwárí system, but with the body—a legal unit or entity—through its representatives, styled lambardárs.

In the first kind of tenure, there are two grades of right between the Government and the actual owner of the land-share:

(1) the taluqdár, or over-lord,

(2) the legal body, the community.

In the second kind there is only one,—the legal body.

It is also obvious that there may be no village *body*; the local area of a village or other estate, may be in the hands of one man, who then unites in himself the proprietor actual, and the proprietor legal with whom Government deals. It is also obvious that in a province where no objection exists to the complete or perfect partition of lands, any joint estate or group may completely split up, and form a number of estates which may ither be each held by a number of joint-owners or by one man. Sole estates will again become joint in time, owing to the joint succession of all the sons, &c., to a sole owner on his decease.

This second class of tenure being far the most important, I shall take it first, and commence with an account of the village body or community.

§ 2.—*The North-West village.*

In an introductory chapter, I endeavoured to explain how the local groups of village landholders came to exist in their present form. I pointed out that, from whatever causes, the village now is to be found in different parts of India, in two distinct forms—

(1) where the village owners are governed by a headman, and have a staff of watchmen, menials and artizans in common, but

each owner has no right to anything but his own holding; lays no claim to any common land outside that holding, and acknowledges no responsibility for his neighbour's Government revenue. If there is any culturable waste to spare in the village, outsiders of whatever caste may come in by permission of the Government officials, only acknowledging the headman, and paying their proper Government revenue, and the dues which by custom are appropriated to the village servants. There may be some local custom connected with payment to the headman, but the outsider once admitted has exactly the same right to his holding as the oldest inhabitant.

(2) The other form also consists of a local group, but here the group has an ancestral bond of union; it claims, as a rule, to have descended from one or more original conquerors, grantees, or founders of the village. It lays claim to the entire land, waste and cultivated, inside the village limits. It admits no outsider (except rarely and under special conditions) as a shareholder, or as a member of the body. Outsiders admitted may come in on highly favourable terms, but only as privileged tenants. The governing body of the group is not a single headman, but a pancháyat or committee of elders, the headman being only distinguished by the fact that some one (or more than one if there are divisions of the group) must be the spokesman and agent in the revenue and other public business of the community.

These two forms of village I distinguished by the terms "non-united," and "united" or "joint" village. Either form of village lends itself easily to a suitable system of revenue management; and as a matter of fact, the former type of village, where it is found uniformly over large tracts of country, has in practice fallen under the raiyatwárí system[2]. It is the joint type that is especially adapted to the North-West system. The whole

[2] Except in the Central Provinces, where, in many cases, the headman was made proprietor, and the village landholders became inferior proprietors. The headman's family, succeeding him, became in time a joint body of proprietors, and they are the settlement-holders with all the usual characteristics of the North-Western system.

body is by natural constitution jointly liable to the State for the revenue, and the body can be dealt with as a whole; a lump assessment is laid on the entire area (and this the members of the group distribute according to their own law and custom); and a representative of the body, or one for each main division thereof, is the intermediary who signs the engagement, and deals with Government on behalf of the body. Where villages of the non-united type are brought under such a system, they are so in reality by changing their character: the joint responsibility is accepted by them, and a common interest in an area of adjacent waste is recognised.

Notwithstanding, however, that under the joint-village system of revenue management there is a joint responsibility, and that it is the body, not the individual, that is dealt with, each holder's separate customary right and share is secured by authoritative record. It has been, accordingly, claimed for this system, that the landholders have the principal advantages of a raiyatwárí tenure, while the Government avoids the enormous labour and risk of dealing direct with thousands of small individual holdings.

The Bengal theory of an intermediary between the cultivator and the State is also here maintained, since the "corporate body," if I may use the phrase, through its lambardár or spokesman is the required middleman: *it* engages for the revenue, and is, in accordance with the system, recognised as proprietor[1]. The body, as I said, may be reduced to one, and, again, be expanded into many; but the theory is not affected: so, too, it may split up into a number of bodies, or a number of units, but each resulting estate still is held on the same theory of right.

Speaking generally, the "united" type of village is the one with which we have chiefly to do in the North-West Provinces. At least that is the impression which a general reading of reports

[1] While, on the other hand, in the application of the theory, a wide difference results from the fact that while in Bengal the middleman proprietor was an actual individual, whose position was the result of a State recognition or grant, the middleman here is an ideal body, and has interfered with no man's rights.

gives, and it is certainly the impression which the celebrated "Directions" has stamped on the revenue literature generally not only of the North-Western Provinces but also of the Panjáb.

§ 3.—*Question whether all the North-Western Provinces villages are really joint in origin.*

I shall, however, have occasion at least to indicate that this universal "jointness" of villages[4] is very doubtful; in other words, that just as in other provinces, we have reason to believe that the oldest and most general form of Hindú landholding was not then joint, but the non-united village, and that the "village community" or joint village grew up in the midst of it, and over it, in various ways, so it is here.

Anticipating the use of terms which will be explained presently, I may say that it is very doubtful, at the best, whether many villages now called bhaíáchára and allowed an interest in "common" land, and held jointly liable (at least in theory) for the revenue, were really of the joint type according to their historical origin.

The doubt consists in this: if you assume that any given village was originally a truly joint village community; that it was really some three or four centuries ago started, say, by one man, or one family, whose descendants for a long time remembered their common descent and held land or divided the profits strictly according to ancestral shares;—if you suppose that in course of time the ancestral holdings got modified by necessity or accident, and are now held on a basis of custom, all original connection having been long forgotten, and perhaps some men of different caste or race have been in bygone years admitted into the body;—it is obviously very difficult, in its present condition, to tell whether the village had really the history I assume, or whether it was from the first a "non-united" village.

[4] Jointness, I mean, in original nature, before the effects of partition, sale, revenue default, and so forth, may have affected the constitution.

On the other hand, a village may present to the observer at the present day, a very similar existing state of things, and yet the truth may be that the village is *ab origine* of the non-united type. For the distinguishing feature—the right to the waste—may have long been obliterated, owing to its having all been appropriated, and the only waste existing being such plots for cattle-tethering and so forth as would naturally, under any form of village, be left open to the general use. Even if there is waste, which originally the villagers would not have claimed exclusively, the example of neighbouring villages, the effect of revenue systems, and the disappearance of the "Rája" who was so necessary a part of the old society, and the consequent absence of a superior claim to it, may naturally have resulted in the group getting to regard the waste as their common property, although in days long past it was not so regarded. We shall come later on to the facts which tend to show the true nature of bhaíáchára villages, but, meanwhile, it is not surprising that they should have become popularly and officially regarded without distinction as a form of joint village.

§ 4.—*Classification of villages adopted in the "Directions."*

The Directions of Mr. Thomason, then, started with the general idea that all the villages were joint: and the author regarded the various customs which now distinguish them, and invite a classification of some kind, as the result of a gradual decay or development—whichever it should be called—of the perfect joint form.

Mr. Thomason classified villages into—

(1) Zamíndárí,

"zamíndárí khális" (where there was only one owner; and where the body was as still joint and undivided, "zamíndárí mushtarka"),

(2) Pattídárí,

(3) Bhaíáchára.

The second and third classes had "mixed" or "imperfect" forms, which may be regarded as two additional classes.

These terms have become, as it were, the *shibboleths* of the North-Western revenue system, and are constantly to be found in reports, applied to tenures,—for example, in Ajmer, Kangra, and Kumáon,—with which they have in reality nothing to do.

Before going further I must make these terms intelligible to the reader by a brief explanation.

§ 5.—*Zamíndárí villages.*

The first term explains itself; here the body is still undivided: whether there is one man managing for a number of joint owners, or for himself, the features are the same. Where there are many sharers, the whole of the land pays the usual market rents, and these are thrown into a common stock, out of which the Government revenue and the other expenses are paid, the profits being distributed, according to the known shares, to each member of the body. The term, however, takes no notice of the very different principle on which these shares may depend: it merely takes note that there is a joint and undivided body regarded as proprietor of the whole estate.

It should be borne in mind that the term "zamíndárí," as here used, has not the meaning which it bears in Bengal. It is not used to signify the tenure of lands managed by a zamíndár or revenue agent who became proprietor. It indicates only the right of proprietorship over a certain group of lands or estate, including both the waste and cultivated land within its limits.

This tenure may be that of a sole individual or a joint body. In either case it implies, in revenue language, that there is no diminished or partial right, but the estate is held in full or in joint proprietorship.

It was hardly necessary to say that in some cases there may be no proprietor, in which case the Government is itself the zamíndár. As a rule, in Upper India, Government is averse to holding "khána khálí" estates (as they are often called), and a proprietor is looked for among those best entitled, who are willing to undertake the responsibility of settlement.

§ 6.—*Pattídárí.*

The **second** term indicates that there has been a partition of interests by separate record and allotment of the ground. The estate, as regards responsibility for Government revenue, still remains joint, and its general management is also in some respects joint; but each sharer or group of sharers has obtained a separate interest in his holding, and he alone takes all the profits and bears the cost of cultivation: he pays the share of the Government revenue and village expenses, which corresponds to his theoretical share in the estate.

There may also be an "imperfect" or mixed pattídárí estate, by reason of the fact that part only of the village has been divided, the rest still remaining joint.

In a pattídárí estate, where the ancestral connection is remembered, the typical or natural basis of division is often the fractional share which belongs to the holder from his place in the joint succession recognised by the Hindu or Muhammadan law of inheritance. Thus, supposing the founder to have four sons: each son's family share or "pattí" of the estate would be one-fourth of the whole. But these shares may be modified by circumstances; it is then no longer possible to say that the pattídárí estate is always held on legal shares; but the practical characteristic is this, that the divided share of the land corresponds (or is accepted as corresponding) to an ancestral, or modified ancestral, system of shares. When the landholding is allowed to be without reference to any system of shares, the estate is no longer to be classed as pattídárí.

§ 7.—*Bhaíáchára.*

The **third** or bhaíáchára form represents a division where a scheme of ancestral shares has been forgotten or never existed. The term means literally "custom of the brotherhood," *i.e.*, the divided holdings of land do not correspond to any fractional portions of the right in the estate which a law of inheritance from a supposed common ancestor would indicate; but the estate is practically a

cluster of separate holdings, the relation of which to the whole is no longer expressed by any convenient system of shares, whether theoretical (on the law of inheritance) or modified.

In bhaiáchára villages separate possession is generally recorded, but in rare cases it is not. In such cases, the estate may really be joint, only that the principle of sharing burdens and profits is different. This fact alone affords a suggestive indication that the classification of the "Directions" is not a sufficient one[5].

[5] Mr. Whiteway, who was good enough to give me valuable advice on the subject of the North-West villages, remarks of Mr. Thomason's classification :—"It is a mere office classification, and no ground for it can be found either in the language of the people or their institutions." [The vernacular terms above given are mere Revenue office translations of English terms : bhaiáchára is a true indigenous term, but it is not a term which indicates a class distinct from "zamíndárí," &c., but one that indicates a principle of distribution, which, as I shall presently show, is the true ground for classifying.] "There was a time when even such a rough division as it is may have been of use; but with our careful record of rights, such a time has long passed away. The terms hardly even represent certain stages of development; it is perfectly incredible that a bhaiáchára estate is a zamíndárí one, decayed or developed."

This last phrase should, I think, be understood as meaning that a bhaiáchára estate is not always the result of decay. It is easy to conceive that it is so in some cases; the survival of the "imperfect bhaiá-chára" where the holdings are partly on custom, and ancestral shares are still remembered with regard to certain profits, lends probability to the view. Nor is it in any way difficult to understand how a joint holding should resolve itself into a several holding, and how theoretical shares should give way to practical holdings resulting from circumstances.

On the other hand, there are many estates classed as "bhaiáchára" in the official scheme which are really the non-united village form, where no ancestral connection has ever existed.

The classification, then, is defective. It is based partly, but not completely, on the degree of *separation* of the interests in the estate. But it really makes no difference to the *tenure*, in what relation the sharers in the estate stand to the whole. All tenures in the North-Western Provinces that are not taluqdárí, are really "zamíndárí," *i.e.*, however many sharers there may be, and however differently these sharers may be interested in the estate, the common feature is that the whole is regarded as one body, and the body is regarded as the middleman between the individual sharer and the State.

The attempt to separate "zamíndárí" from "pattídárí" as *different tenures* is only one of official convenience; it is a mere office matter whether we call a pattí a share of an estate or a separate estate; for, as I remarked, the people may at once, if they choose, snap the bond, and then the separate pattís become so many separate estates, which may each of them fall into the class "zamíndárí," by reason of their being held undivided as regards their interior arrangement.

In the "imperfect" or "mixed" bhaiáchára the land is held partly in severalty, without reference to shares; while as regards some land or some profits, the ancestral shares are still remembered as a principle of division.

§ 8.—*Real classification of villages.*

Coming then to regard the North-Western Provinces villages as they now are, as one kind of tenure only, in which the sharers have different kinds of interests, we shall be able to classify the villages as follows, on the basis of the question whether legal and ancestral shares are remembered or not:—

(A) Ancestral shares are the only measure of interest.

I.—Estates in which *legal fractional shares* (depending on the law of inheritance, &c.) are the measure of the interest of the coparceners.

(Forms)

(i) The land may be held in common, all the land being rented at market rates, the proceeds being thrown into a common stock and divided by a manager (separate possession not recorded).

(ii) The estate may be divided either entirely, down to the individual holdings (khátas) or only as far as the "pattís" or minor sub-divisions, which may remain joint within themselves.

(iii) The land may be held in severalty according to fractional shares; but as these may not yield corresponding shares of the profits, the burden of the revenue demand may have to be adjusted accordingly (separate possession recorded).

(iv) Part of the land is held jointly and part in severalty ("imperfect pattidári" of the books).

The term bhaiáchára does take a certain note of the *principle of division*; only this principle is not made the basis of classification generally; thus two estates may both be classed as "zamíndárí," although the internal method of management may be very different.

It should, however, be borne in mind that Mr. Thomason himself never intended the classification to be other than an arbitrary one, adopted for official convenience, and based on the degree of separation as "an obvious distinction." He admits that the difference of the *rule according to which profits are shared* is a good ground of distinction. (See Directions, edition of 1849, §§ 86 and 91, pages 54-55.)

(B) Ancestral shares are known, but applied only partly,—that is, to a certain portion of the profits.

II.—Estates in which *the holdings are "customary"* (and are *de facto* holdings fixed by circumstances), *ancestral shares being still partly remembered, e.g.*, in dividing profits of "sair" (jungle, fisheries, fruit, &c.) or of common land.

(Forms)

(i) Each holds a share as "sír," or land which he manages and cultivates himself out of proportion to his ancestral share, paying a nominal or low rent to the common fund: the rest of the estate is held for the common benefit, and the profits are distributed according to ancestral shares. Here separate possession will usually be recorded in the khewat.

(ii) The same, separate possession of the holding not being recorded; this is *rare*.

(C) Ancestral shares entirely unknown or not observed in any way.

III.—Estates in which the holdings *are all customary* and any *theoretical system of fractional shares is quite unknown* (may never have existed).

(Forms)

(i) When separate possession is recorded.

(ii) When separate possession is not recorded[6].

§ 9.—*Origin of joint villages in the North-Western Provinces: dismemberment of the old Ráj.*

I may now proceed to offer some remarks on the origin and nature of these different interests in village lands.

The ways in which the estates now owned by joint communities and recognising ancestral shares arose, may be various:

[6] This is rare; but there are cases in which no separate possession of fixed holdings is found recorded in the khewat and where yearly arrangements are made for the cultivation. This is probably a survival of the forms noticed in the Chhatísgarh division (see section on Central Provinces Tenures), where the landholders interchanged lands every year, so as to give each an equal chance of profit and loss with good and bad lands.

(1) In the first place, there may be the same influence as I have indicated in the general chapter on Tenures and illustrated from the Gonda district in Oudh. Certain *powerful families*, by *usurpation* or *grant*, obtained, besides their original landholders' rights, the Rája's claim to taxes and the disposal of the waste. They divided the lands among themselves, and the men who obtained each a certain area in full right, became founders of the families which are the joint owners of the villages. Or the Rája had granted land in jágír in the same way, and the grantee's descendants form joint proprietary communities. When the Ráj itself was divided on the death of a Rája among his descendants, the tendency of the small estates so produced would be, to get smaller and more subdivided till a number of estates consisting of single joint villages resulted.

It may be hazarded that all the higher caste communities—Rájputs, Brahmans, and so forth—really originated in dismemberments of the old "Ráj" rights in this way.

§ 10.—*Settlers on waste land.*

(2) Another origin is in grants for clearing the waste. The Rája makes a waste grant on favourable terms to an enterprising man, who starts as the leader of a party of cultivators whom he collects: he establishes a group of buildings close to the best land, and himself makes a beginning by digging a well on the most fertile land, which thus becomes the nucleus of his "sír" or special holding. This sort of proceeding is distinctly traceable in the Sambalpur district of the Central Provinces, and must have originated communities in many other parts. The founder's family, in the course of time, developes into the proprietary community. The people called in to aid reside on the spot, as either "proprietors of their holding" or "tenants" on fixed tenure and favourable terms. In some cases they may have been regarded as members of the proprietary body from the first, because in these cases it is by no means always that the leader of the party gets recognised as the proprietor of the whole settlement.

§ 11.—*Descendants of Revenue-farmers.*

(3) Another origin of communities is of much later date; it is to be found in the revenue-farmer, put in by the preceding Government, or even as late as in the times of our own, to manage the village. He may have usurped the position of proprietor, reducing the original holders of land to being his tenants; his descendants now form the proprietary community in the upper stratum of landed interest[7].

He may not have displaced any one, however; he may have found the estate deserted, from famine or the vicissitudes of war: it may have been waste originally, and he founded and brought it under cultivation.

From all these sources really joint communities would arise, and whether they remained joint or separated, their ancestral or legal fractional share would be the measure of right.

§ 12.—*Settlement of tribes.*

(4) In the Panjáb we shall see that a prominent source of joint-village holdings is the local establishment of a tribe or section of a tribe which settled down in a district and divided the land among the tribesmen. Here the joint claim to an entire area is manifest, whether to the whole area occupied by the larger section, or the smaller sub-divisions assigned to individual leaders or groups of families within it.

[7] In Barélí (Settlement Report, 1874, page 21) I find it noted that there the villages had been overrun by the Rohillas, who had stamped out, or refused to allow, any rights that could be called proprietary. There were then only the two classes of *cultivators*, one resident and the other non-resident. The former were managed by a quasi-hereditary headman called *muqaddam* or *pradhán*; but he was never looked on as owner, and only paid a little less rent than his fellows, to the conquerors his landlords. At our settlement, it is curious that the proprietary right was not conferred on the whole body of resident cultivators (possibly because they were not willing to be jointly responsible), but on the individual *muqaddams* who had no sort of claim by custom. Thus the villages were at first "*sole* zamíndárí" estates, but in time became joint or in shares, when the original grantee died and left the estate to be divided among his heirs. Exactly the same thing happened in Pílibhít (Report, 1872, page 88).

The North-Western Provinces reports do not afford evidence of this origin to village communities. But it would require an examination more in detail of the prevalent castes which compose the villages, to give any final opinion on such a question. In later times, of course, the country originally occupied is not likely to consist exclusively of fellow-tribesmen; outsiders get admitted, purchases take place, revenue-farming arrangements upset the holdings, and many ancient rights disappear during famine and war. The result is a great mixture in the present inhabitants. We can now only trace the area originally peopled by one tribe, by the predominance of a certain caste or clan, and by the existence of traditions, or peculiar local names.

But in spite of this difficulty, it may be said at least with probability that tribes of the same stamp as those that settled in the Panjáb, did not extend their advance to the North-West Provinces. Throughout the Gangetic plain, the general evidence points to the whole country having been divided into "*Ráj's*," each smaller Ráj being often a member of a confederacy owing subjection to an "Adhiráj," or over-lord. Within each Ráj the villages were mere groups of separate holdigs, as already explained. It was at a later date that joint villages grew up and multiplied in the way described; and in the course of time even the remaining non-united villages came to be treated as jointly liable for the whole revenue, and as owners of the waste. These villages are now officially classed as bhaiáchára communities equally with others which were essentially of the joint or united type.

§ 13.—*Variations from the ordinary North-Western Provinces village type.*

The foregoing list of the sources to which the origin of the North-West village may be traced will apply generally to the districts of the plains. But, as might be expected, the districts nearer to Central India approach more nearly to the Central Provinces tenures. Thus in the Jhánsi and Lalitpur districts, which

border on the Ságar and Narbada territories, it would seem that the villages were originally of the non-united type, and that they have become joint, under the North-Western Provinces Settlement system, owing to the creation of a proprietary right in the headman, which is now held by a body of descendants.

The Jhánsi district[8] did not exhibit the regular type of strong proprietary communities; anything resembling a proprietary right was unknown[9]. But it is stated that this condition—the aggregation of landholders without any joint interest—was the result of the decay of a former joint constitution. The original ancestral shares had fallen into oblivion, and actual holdings alone were recognised[10]. There was a headman, called "Mihta" (or Mihtê), like the Maráthá patel, and he had his lands and perquisites of office, here called "haq-mihat[1]."

The plan at settlement was to make proprietors of the Mihtas, and of all who, as members of the official families, held lands which formed part of the "haq-mihat." To these were added all who enjoyed special privileges and perquisites, and all who appeared on the merits to have been acknowledged as "sharers" in the estate in any sense. All the residue then became "tenants."

Among the occupancy tenants recognised by the law, may be noticed those called "purána jotár" or original cultivators (who paid a low rent in a lump sum (tankhá) on their entire holding). They can sell and transfer; and they can relinquish their lands, with right of re-entry on repayment of outlay to the intermediate holder.

[8] Jhánsi is a scheduled district under Act XIV of 1874 (Notification No. 687A of 9th November 1877), but the Revenue and Rent Acts apply to it, since the names of the Jhánsi division districts do not appear in the schedules attached to *those* Acts, and it is only the districts in those schedules that are exempt from the Revenue and Rent law. The list of Acts in force in Jhánsi is to be found in Government Notification No. 1148 of 29th August 1878. The old rules for Criminal and Civil Justice legalised in 1864 are now repealed.

[9] Administration Report, North-Western Provinces, 1872-73, page 14, § 23.

[10] Jhánsi Settlement Report, 1871, § 340. An attempt was made to draw up a "phánt" or list of shares, which was all wrong, but was admitted as evidence in some cases in Court and led to considerable confusion.

[1] Settlement Report, § 31.

There are also tenants at "fixed rates," and others at "customary rates," liable to enhancement if the village assessment is enhanced.

Why all the cultivators were not declared proprietors of their holdings, as they would have been under another system, can only be answered with reference to the principles of the North-West system, which will not admit of dealing direct with the actual cultivator. Even as it was, there being no natural communities, the creation of proprietors has resulted in a number of small estates, which have been since unable to make way and have become involved in debt[2].

In Lalitpur there was the same absence of cohesion in the communities, if they can properly be called such. There were, however, many villages in subjection to local chiefs called Thákurs, who held the villages in jágír or on a quit-rent by the "ubárí" tenure (see Section IV on Central Provinces Tenures). These were acknowledged as proprietors over the heads of the actual landholders[3], but in such cases the original rights of the latter were protected by making them "sub-proprietors." This settlement was carried out under the Ságar Rules of 1853, which were afterwards applied to the Central Provinces[4]. The whole district and its settlement may be regarded as answering to the description given in the section on the Central Provinces tenures.

Where there were no Thákurs, &c., the revenue-farmers or headmen[5], as the case might be, were made proprietors. This was the case with the parganas which had belonged to Sindia, and

[2] This is to be noted as a curious result of the endeavour to create proprietors. In Jhánsi there are no wells: the land is dependent on rain, and each cultivator can barely be sure of paying the revenue on his own field: a person, therefore, artificially invested with the right over, but with the consequent responsibility for, the revenue of a number of such fields, cannot bear up. The so-called proprietors have had to borrow largely to pay their revenue and have become hopelessly involved.

[3] Lalitpur Settlement Report, 1871. The Board's review gives a history of the difficulties and contentions of these chiefs. The Report, § 196, complains of their being incorrectly called taluqdári estates.

[4] Lalitpur Settlement Report, 1871; Government Review, § 15.

[5] The Report, § 193, says that the headmen were usually the descendants of the original clearers and founders of the estate ("Jharya-kath").

those of Bánpur and Maraura which had been confiscated; here proprietors *had to be found*. But in some cases where these farmers or headmen had no distinct claim, and where the original landholders had kept up a local bond of connection which could be ascertained, the community was declared proprietor[6], on the typical North-West principle. In cases where the revenue-farmer or the headman was made proprietor, the members of the original landholding families became (as usual) privileged tenants or sub-proprietors.

Forest officers will be interested in knowing the fate of waste and jungle lands.

Wherever these were in a Thákur's estate (jágír or ubári estate) they were all held to be included in the grant. Elsewhere a rule similar to that of the Central Provinces was ultimately adopted. At first indeed (in 1865), all the considerable tracts of waste were reserved to the State, and clauses to this effect were entered in the Settlement "Wájib-ul-'arz." But in 1867 this was considered unfair; the clauses were struck out, and the waste distributed to the villages, in amounts equal to double or quadruple the cultivated area; only the surplus (about 10,900 acres) was reserved to the State[7].

§ 14.—*Details about each form.*

Returning, however, to the ordinary form of joint village, as now recognised, it remains to offer some details about their constitution: (1) as to the general features of the communities; (2) regarding the "zamíndári" and "pattídári" or ancestrally shared estates, and the process of the disintegration of joint estates into severalties; (3) regarding the bhaíáchára estates.

§ 15.—*General features of the North-West village.*

Whatever may be the true origin of the estates, they are now, all of them, as long as perfect partition is not granted, jointly liable for the Government revenue, and all of them claim the entire

[6] Government Review of the Settlement Report, § 16.

[7] Settlement Report, §§ 97 and 114.

area of waste and unoccupied land within the limits of the villages as "shámilát" or common property.

Affairs are managed under all forms, by a panchâyat, and there is an annual audit of accounts called "bujhárat" in which the headman or managing members account for the expenditure incurred for village purposes. In a completely undivided community, this audit will cover the entire expenditure and income, and explain the distribution to the different sharers.

Outsiders are, as a rule, not admitted into the community, but cases occur in which a family Brahman or some privileged individual has been so admitted; then, of course, the share assigned him is an exception to the general rule of ancestral or fractional division throughout the estate.

There may be occasionally in the village, persons with a full proprietorship in their holding (arázídár, or with a non-transferable ownership (farotan milkíyat) who are not members of the community. Such a status may be acquired by some old proprietor of the village whose right has been borne down in bygone days, by the proprietors now in possession; or it may be that a member of the body had thrown up his holding (having arrears of revenue which he could not pay) and he or his heir has now returned to the village: in such a case he would probably be admitted to hold land, but not to have a voice in the management, unless he paid back the arrears.

There may also be in the village, old tenants who helped the owners to clear the land originally; these, though not proprietors, still have fixed rights, and pay no more on the land than the proprietors do, towards revenue and expenses.

§ 16.—*Villages held jointly on ancestral shares.*

The simplest form of joint estate held on ancestral shares is where all the land is either wholly let out to tenants, or held partly by sharers as tenants of the body, but in any case paying full market rents. The rents and other receipts are then thrown into a common fund, and, after deducting expenses, the profits are distributed according to the shares. This process, effected by the managing

member, is tested by the assembled coparceners at the annual bujhárat or audit of village accounts. Separate possession is not, in such estates, recorded in the khewat.

But there are also cases in which separate possession is not recorded, and yet each sharer holds and manages on his own account a certain area of "sír" land at low or nominal rent; this sír being out of proportion to his theoretical ancestral share. The remainder of the land is held in common.

The proceeds of the common land and of the rental, if any, of the sír land, may suffice to cover the Government revenue and other expenses; if so, the profits of the sír are clear gain to each man according to his holding; if not, the deficit is made up according to ancestral shares.

Such an estate, as long as *no separate possession is recorded,* is still the "zamíndári mushtarka" of the text-books, as much as that first described; but it is obvious that there is a very real difference, of which the official classification takes no account. When such a method of holding is observed, it is obviously not only a step towards several holdings, but there is a material change in the principle of sharing.

In the oldest form of common holding, it is probable that a custom of periodical redistribution was observed, so as to give each sharer his turn of the bad or less profitable holdings. We shall come upon instances of such a redistribution in the Panjáb and also in the Central Provinces[8].

[8] I have not found any direct instance in the North-West Provinces of this custom of occasionally or at fixed periods *redistributing the holdings* with the object of equalising the differences which result from one holding being better or worse than another. But I am told that in Fatihgarh and elsewhere the principle is by no means unknown. It is said to be common in Bandelkhand, and under the name of "bhejbarár" excited no small discussion in Mr. Thomason's time. Section 47 of the Revenue Act acknowledges such a practice and makes provision for the Settlement Officer to deal with it. But there are occasionally village arrangements of a permanent character intended to obviate such inequalities. Thus in Mainpúri (Settlement Report, 1875, page 105) there is what is called a tauzih tenure,—that is, the land is divided into two classes, the rich *gauthán*, or homestead, and the inferior distant land, or *barkhá*; each holding is of so many "tauzih bíghás," which means that each bíghá is made up of a proportion of each kind of land.

§ 17.—*Villages held in severalty on ancestral shares.*

If the hitherto joint cultivators agree to a division on ancestral shares, then that moment such a division is effected, the estate becomes "pattídári;" if the division does not go by ancestral shares, but according to actual and customary holdings, the form becomes "bhaiáchára."

It is, however, obvious once more, that the mere fact that the joint holding has been divided, does not really alter the nature of the tenure, and therefore the official classification which recognises the "pattídári" as a kind of estate, is only arbitrary.

A pattídári estate is only a zamíndári estate held on ancestral shares which have been divided out, and which are henceforth managed by each sharer on his own responsibility, he taking his fractional share of the lands, and paying the corresponding fraction of the revenue and expenses[9].

The fractional share commonly arises from the law of inheritance; thus an estate is held by a man who has four sons; one of the sons is dead and is represented by three sons; then the shares are, that three sons hold one fourth each, and the remaining fourth is again divided into three, one for each grandson. It may be also that a fractional share takes its origin from a sale or mortgage; thus one of the four sharers may sell one half with the consent of the community; then the estate is held in two fourth shares, two eighth shares, and three twelfth shares.

This division may occur in various ways. There may have been

[9] In Azamgarh (Report of 6th Settlement, § 9 of the Review) a curious form of shared estates is described, which is like the "Khetbat" in Oudh. Here, it is not the mauza or village that is divided into shares, the whole being the property of one group of families, but the whole estate extends over several villages. One "pattí" or sharer of the estate will have some lands in one or two mauzas, another pattí in another mauza, while all the pattís will have lands in the third. Often all pattís will have lands in all the villages. It was necessary in order to clear up this confusion to make statements called "báchh-bandi," in which each sharer's lands in all the mauzas were brought together, and the total revenue of the pattí thus shown in one. When there were in any village proprietors of lands, but not belonging to any of the "pattís," they are called arázidár (Report, Chapter III, section 5, page 63).

certain original divisions of the village known as "thok" or "taraf;" these are, perhaps, the result of an original allotment of land of the village site to two or more main branches of the original founder's family.

In each taraf there may be the joint holdings of minor families, called "pattís;" or there may be no "tarafs," but the whole village may be divided at once into pattís. When an actual division of holdings takes place, the partition may extend to the several pattís only. The land inside the pattí may be still held jointly by a group. Or, lastly, the division may have gone down to individual holdings or "khátás" which may be separated off and recorded.

As long as all these varieties of division have only separate possession and record of holdings, but still form one mahál jointly responsible to Government, we have the "pattídárí estate" of the text-books.

Of course at any moment the remaining slender thread that still binds the divided holders into one estate, may at any moment be snapped by perfect partition, and then we have no longer *a* pattídárí estate, but a series of separate estates, each of which may be a sole or joint estate.

The estate may also remain, as I have noticed, in an "imperfect pattídárí" form,—part divided and part still held in common.

The causes of division may be quarrels in the family, or simply the desire of each man to have his own land to himself. The "sír" is then separated, the rest of the land being left in common to be cultivated by tenants. This imperfect form is to this day very common; the Government revenue is paid out of the common land, the proceeds of it being taken in the lump for the purpose; and each sharer gets his own "sír" profits entire. Only when the profits of the common land are not sufficient to meet the revenue, then the deficiency has to be made up by a payment in the same proportion on the several sír holdings[10].

[10] Oudh Administration Report, 1872-73, Introduction: *see also* Barélí Settlement Report, § 59, &c.

§ 18.—*Nature of the shares.*

In a pattídárí estate the shares may be the actual fractional shares which result from the law of inheritance, and the landholders placed on the genealogical tree; or they may be these shares modified by circumstance and by custom. But the characteristic is that the *correspondence between the holding* as divided on the ground *and the ancestral or modified share* is always assumed, and the produce and expenses are always divided according to these shares.

The circumstances which tend to upset the fixed theoretical shares are various. It may be, for example, that each pattídár has got an equal fourth share divided out on the ground with perfect consent and as equitably as possible under the circumstances at the time of division. But subsequently the conditions change, and it is found that though the holdings correspond to equal fourths of the Revenue demand, one holding becomes in yield and value out of proportion to the fourth of the revenue; it deteriorates and cannot pay it, while another fourth is more than able to meet the exact corresponding share.

Men's talent and capacity for agriculture also vary, and a thrifty shareholder with good land may make so much that he is able to help his neighbours in distress; then he probably takes a slice of his share in consideration of such help, and thus the old shares begin to change.

Another and probably very common cause of change arose in the days when the Government demand was excessive: it required in fact every one to cultivate all he could, in order to keep the village going at all; and so one man's means being greater than another's, he got to cultivate land beyond his legal share. Still as long as it is recognised that the owner has a special fractional interest in the whole, and his actual landholding is recognised as corresponding to the share of the expenses which he pays, the estate is still pattidárí [1].

[1] In the Panjáb, and I have no doubt elsewhere also, the shares in a pattidárí estate are rarely purely ancestral. The days before our rule were rough ones; necessity operated to modify a strict adherence to ancestral shares. The result of confusion

The estate ceases to be pattídárí when any specific share in the estate is no longer recognised. A man has a certain *de facto* holding and he pays at a certain rate *per* plough or *per* well or *per* acre on this. If an owner denies that a stated share is the measure of his ownership, the result of such a contention is either a revision of the share list or the estate is converted into a bhaíáchára one.

This process of change in the holding and ultimate abandonment of the theory of a share, may very well have been *one* origin to the "bhaíáchára" estate. Such villages may have been originally held on ancestral shares, and this origin must always be held probable when the remembrance of a common ancestor is something more than a mere fabulous tradition. It is especially probable when ancestral shares are still made use of in distributing *some* of the profits of the land. Section 46 of the Revenue Act enables the Settlement Officer to distribute the assessment over the several holdings, so that there is no hard-and-fast rule that the fractional share of the estate must bear an exactly corresponding share of the revenue demand.

§ 19.—*Bhaíáchára Estates.*

And this leads me to speak of the features of bhaíáchára estates generally. Such a type may have arisen in the manner just described out of the joint village; but the commonest origin is, that the village was never joint at all, but was from the first the non-united village of the earlier form of Hindu kingdoms; and even where there are some traces of ancestral shares as regards certain of the lands, this may be due to the rights of the headman and his family, not to any original ancestral sharing of the whole estate. For example, under what I may call the older constitution, cultivation sometimes was taken up in a new spot by a person who, as

and of misfortune was that shares got altered according to circumstances, the weak and unfortunate losing, the stronger and more fortunate gaining.

It may be, therefore, that the Government revenue is paid according to customary shares, but the division profits of waste land or "sair profits" and the holding of *sír* land may be according to ancestral shares. Such estates are still reckoned as "pattídári."

headman and leader of a body of colonists, had obtained a grant from the Rája. The headman got to look on himself as the owner of whatever land was not occupied by those who came with him. They, indeed, had their right in their own plots, but new-comers were approved by the headman, and acknowledged his rights by getting him to turn the first sod of a new tank or well that was to be dug; and if such settlers abandoned their land it reverted to the headman. The headman and his descendants then came to look on themselves as entitled to the proceeds of the waste and unoccupied land, and hence shared this in fractional ancestral shares, while the rest of the land was held by the different settlers, according to the custom which has acknowledged the holding of each[3].

Thus we may have a bhaíáchára village with several holdings, and no general scheme of shares; and yet a certain body divides the profits of a certain part of the estate, by ancestral shares.

I do not say that this accounts for all cases, but it is one way in which such a state of things may arise.

In ordinary cases, the whole estate would consist of several holdings entirely unconnected; then there would be a pure bhaíáchára estate: the waste remained at the disposal of the State, though used for grazing and other purposes, and only at a later time became the village "common."

In these estates, the origin of the holding is simply what each man who joined in the original settlement was able to take in hand. This is expressed by the phrase "Kásht hasb maqdúr." Each holding is spoken of as the man's "dád illahi," or gift of God to him: and as the right in it is heritable, it is spoken of as his "wirásat" or inheritance.

It is very remarkable how this term, of Arabic origin, has spread all over India: the heritability of the land occupied and cleared being the important feature, land so taken up is described by a term equivalent to "inheritance." And this is true, whether it is the

[3] An interesting example of this will be found described in Sambalpur, Central Provinces.

land occupied in a non-united village, in Hindu States where the joint ownership of an entire village is unknown, or in the joint villages: the same term occurs, either as the "mirás" right, the "wárisi," the "wirásat," the "janmi," or some similar name. This we shall find all over India—in Kangra and the Himalayan States; in Central India, the Dakhan, South India, Malabar and Kanára.

Among the most convincing proofs that the "bhaíáchára[3]" estate may have sprung from the non-united village, is the fact that the shares in some estates are counted according to an imaginary number of ploughs or masonry wells. It is obvious that in a settlement where a number of persons join and bring land under cultivation, the area held was of little importance; especially when it is recollected that in early times there was no rent, and the State revenue, as well as the headman's perquisites and the dues of the village servants, were all provided for by deductions from the grain heap. What was of far greater moment was the fact that a man had joined with one, two, or three ploughs and the necessary cattle, or that he had sunk a well, or that two or more joined to dig one.

Very often, in bhaíáchára estates, the burden of Revenue and expenses is now borne by the whole body, by a rate applied to all cultivated land, or to the whole estate (dhárbáchh or bíghá-dám), because that is, in the present age of money revenue and money rents, an obvious and easy way of settling the matter. But in many cases a distribution of expenses is still by ploughs and wells.

It may be asked: if, as described before, the original village was a mere group of isolated landholders acknowledging a headman

[3] A curious instance of the growth of a "bhaíáchára" village under the North-West system, is afforded by Mr. Barnes' Settlement of Kangra in the Panjáb. Here there was a pure old Rájput state, each villager with his "wárisí" holding, and no claim to the waste except to use it for grazing, &c., and no idea of any liability beyond that of his own grain-share to the Rája. The Settlement Officer proceeded, as a matter of course, to allot the waste to the villages, to treat them as jointly liable "bhaíáchára villages." He did not seem to think that he was doing anything at all out of the way, in dividing up the entire forest and waste among the villages; and the people seemed hardly to realise that the land was being granted to them. As to the joint liability which would result from the system, it is not even mentioned; apparently, it was thought quite a matter of course, and of no moment whatever.

and other institutions in common, but having no claim of ownership over the unoccupied land in the vicinity, and having no joint responsibility, how was it that such a group came to be amenable to the theoretical joint liability for a lump assessment, and to claim the waste in the vicinity of their holdings, and so to have a property, just like an originally joint village, over the entire area in a ring fence?

It is easy to account for the present joint condition of the bhaiáchára estate. The old Rája's interest in the unoccupied land around the village cultivation ceasing to exist, it is very natural that the whole body should have claimed it, and occupied it entirely among themselves; or in other cases, as above indicated, the headman's family and his co-settlers should claim the whole, and subsequent comers should have looked upon themselves as subordinate to the first settlers. Although, in some cases, such "tenants" may pay the sum imposed by the "dhárbáchh" at no higher rate than the others, they are looked on as "tenants" and are not admitted to a voice in the management of the affairs of the village. When, therefore, the Settlement Officer recorded the village landholders as proprietors of all land within the local limits of the village, it did not strike the villagers as anything unusual that a lump assessment should be levied on the village as a whole, since the custom by which the sum was distributed over the holdings was recorded; and the joint responsibility is itself too shadowy and remote a contingency to affect them much.

§ 20.—*Taluqdárí Tenure.*

I must now turn to the other class of tenures, where, besides the village body as proprietor, we have yet another proprietary interest between the cultivator and the State: this is called the taluqdárí tenure.

I shall make no apology for repeating that the historical changes and many vicissitudes which affected landed property in India, resulted in the survival of interests in layers, if I may use the phrase,—in the superposition of one "proprietor" over

another, and the consequent sinking of the first into a position subordinate to the second.

First, for example, let us imagine an ancient district in which we find the usual groups of land occupants under the old Hindu Rája. Then the Rája grants one or more villages to some military chief or to a member of his own family. This family becomes proprietor, and the original cultivators and land owners gradually sink into the position of tenants at privileged rates. This lasts for some years, perhaps generations, and then comes the Mughal or Marátha governor, who, not satisfied with the revenue collections, appoints a farmer over the village. This person gets a firm hold on the village, and in his turn he and his sons jointly succeeding, claim the proprietary right over the whole. There is thus a third layer; only that by this time, the lowest layer will, perhaps, have died out or disappeared altogether, and only the grantees of the second layer will appear now as "tenants," "proprietors of holdings," and so forth; the farmer's family are now the joint body of proprietors. Last of all comes some new Muhammadan State grantee, jágírdár, or taluqdár. In process of time he might have become the proprietor. But our rule succeeded, and the process was arrested; the "taluqdár" is now recognised as "superior proprietor;" and the village body is protected by a "sub-settlement" as the inferior proprietary body. In Oudh we shall see this process fully illustrated. In the North-Western Provinces it is less marked.

The double tenure is spoken of as "taluqdárí," not because there was here a defined grant called "taluqdárí," or because the superior proprietor is always a "taluqdár," but because the state of things is most analogous to the properly so-called taluqdárí tenure of Oudh, and because the term "taluqdár" is essentially indefinite and covers almost any variety of superior position in virtue of which some person may have got the management and the revenue collection and responsibility into his hands, and so succeeded to a kind of proprietary interest in the estate.

The actual position found to exist at settlement would naturally

vary, and the "taluqdár's" degree of connection with the State may vary from one closely resembling the actual proprietorship, to that of a mere pensioner on the land, who receives a certain allowance, but exercises little or no interference with the actual management. Under the North-West system, it was left to the Settlement Officer to recommend, and the controlling authorities to determine, whether the "superior" was in such a position that the settlement should be made with him, or with the original body, granting the superior a cash allowance paid through the treasury. Speaking generally, it may be said that in the North-West Provinces it has been the practice, wherever possible, to recognise the original owners, making them full proprietors, and buying out, as it were, the superior, by giving him a cash "málikána" or taluqdárí allowance of 10 per cent. on the revenue [4].

In Gorakhpur, for instance, I find the Settlement Report [5] describing what were apparently real "taluqdárí" estates held by various Rájas. Under them were found people in possession of proprietary rights in the second degree. Just as in Oudh, these were usually the rights created or confirmed by the grant called "birt;" there were cases of "jíwan-birt" or proprietary holding granted to the younger members of the Rája's family; the "murchhbandi birt," grants made on condition of service and keeping order on the borders; and "sankalp" or "birt" made to religious persons or institutions. There were also many "birtyás" (holders of birts) created (as was so common in Oudh) for the purpose of clearing waste or resuscitating old cultivation. But in those places, the North-West Provinces principle being generally as I have stated, the birtyás were made proprietors, and the Rája was not maintained as taluqdár over them, but merely as the proprietor of his own "sír," "nánkár," and other lands held by him (under the local name of "taufir"), and with the usual 10 per cent. as málikána, or commutation for superior rights besides. The

[4] This málikána is frequently fixed in perpetuity, and does not alter proportionately to the changes in the revenue demand.

[5] Settlement Report, Vol. II, page 60.

same is noticed in some of the parganas of the Cawnpore district [6]. In these cases what was left to the Rája constituted in itself a very large property.

In Azimgarh there is also mention of another kind of double tenure; here there was no Rája, but the powerful families who had become the joint owners of the villages, probably by grant of some former Rája, had in their turn granted "birts" to the descendants of the former and long ousted owners who had originally cleared and brought the estate under the plough. These persons are locally called "mushakhsidár." Sometimes these were settled with as proprietors, but sometimes, owing to the arrangements of former settlements, only as *sub*-proprietors [7].

§ 21.—*Tenants;—their position.*

What has already been said about the gradual overlaying of the original interests in land, will have prepared the student to understand that "tenancy" in land—that is, the holding of land under a proprietor—is, in these provinces, by no means a simple thing. In other words, we have not merely to deal with persons whose position on the estate is due to *contract*, but with persons who, for want of a better name, are called "tenants," but who may once have been owners themselves, and owe their position to no process of letting and hiring, but to circumstances which have reduced them to a subordinate position.

Besides, then, the modern and ordinary cases of contract tenancy, the Settlement Officers had to deal with these other classes.

In some cases it was no easy task to draw the line between proprietor and tenant, and to determine whether a particular cultivator was most appropriately classed as a tenant, or as a proprietor in some grade or other.

But supposing the line drawn, we have next to consider how the "tenants" are grouped for legal purposes.

[6] Settlement Report, 1878, page 43. So in Allahábád, but only trans-Jumna; Settlement Report, 1878.

[7] Settlement Report, § 305.

We have first tenants who anciently were proprietors. These are recognised as having a title to fixed occupancy and to fixed rent-rates[8]. Then, again, another class of tenants may be traced, whom it would be hard not to include among those whose right to some legal privilege is unquestionable. I allude to those tenants who were called in at the founding of the village, and who were given a position in the estate, which was only second to that of the proprietors themselves. In many cases, practically, these ancient tenants differed in nothing from the proprietors but in the fact that they were of a different tribe and had no voice in the management of the village or share in its *common*. In both the classes of tenants, which thus may be described as the naturally privileged, there is a right of occupancy; and the rents payable are often nominal, and in many cases do not exceed the amount levied by the Government as land revenue.

There can be no doubt that the existence of these classes of rights afforded a basis upon which our legislators proceeded to grant "a right of occupancy." But, then, it was urged that all cultivators *resident* in the village whose lands they tilled, were, by custom of the country, irremovable or not liable to ejectment. Whether this was really so in fact, I cannot pretend to determine. Certainly the question could rarely have arisen in old days, since at any time an ejectment of an obnoxious person by a powerful landowner, however arbitrary, could not have been resisted, while in all ordinary cases no question arose, since the landowners were only too anxious to get and keep tenants.

The influence of this view, together with the undoubted fact that there were many whose ancient rights might be at least partially secured from oblivion, led to the desire to secure resident

[8] There is a *modern* class of "ex-proprietary tenants" which is not to be confused with that spoken of in the text. This new class is recognised by the Rent Act, merely in view of the condition of native society. When any proprietor is dispossessed by sale, &c. (voluntarily or by process of law), he retains an "ex-proprietary tenant" right in the portion of his estate which formerly was his special holding or "sír" land.

tenants. The current of official opinion gradually set in the direction of fixing a limit of twelve years (the then usual period of limitation in India), beyond which proof of right should not be required: and the tenant who had twelve years' continuous possession was to be considered as an occupancy tenant.

§ 22.—*Opinions held about tenant-right.*

The justice of such a rule very much depends on the real history of landholding customs. In Bengal, for example, in every permanently settled estate, the zamíndári right was clearly an adventitious thing,—one which had grown up over the original landholders; it might therefore easily be admitted that the great bulk of the village cultivators were equitably entitled to a permanent position. The fixing of an arithmetical rule of limitation was no more than an equitable expedient for putting an end to strife and saving rights which were in danger of being lost through failure of technical proof. But it might be said that in other cases, where the history was different, the claims of the proprietary body were far stronger, and there was no occasion for such a general rule. That is one side of the case. On the other, it would be contended that, whatever the theory may have been, in old days tenants were practically permanent. Every one who got a plot of land on consenting to pay the Rája's grain share, was originally on an equal footing, and one could not be turned out, except by the exercise of arbitrary power, more than another. However this may be, the first Rent Act (X of 1859) granted a right of occupancy to all tenants (irrespective of facts and history) who had held the same land themselves (or by their ancestors) for twelve years [9]. There was therefore no occasion for the Act to make any allusion to the special rights of those ancient tenants whose claims I have described. They, of course, fall within the terms of a twelve years' occupancy, for their tenancy is practically coeval with the

[9] Act X appears to have been passed with very little discussion. It was at first proposed that the right of occupancy should extend to every resident cultivator, and three years' residence constituted a "resident tenant."

founding of the village. I have already in another chapter indicated the general line of argument which has been taken by the official advocates and opponents of the tenant-right law respectively. It is not likely that the controversy will ever be entirely laid at rest; there will always be something to be said on either side. There are, of course, inconveniences resulting from tenant-right when dependent on an arithmetical rule of occupation[10]. But it is to be feared that no law that can be invented will ever be free from such occasional imperfections.

Perhaps the safest solution of the difficulty is to be found in the practice and procedure of the Upper Indian Settlement. The powers which a Settlement Officer has of informal enquiry, bound by no technical rules of evidence, and the fact that he can investigate matters on the spot, as no head-quarters court of justice can, place him in a situation peculiarly favourable for deciding such questions. It may be thought, therefore, that it would be better to leave the rights of a tenant to be dependent on the enquiry of the Settlement Officer, and on the usual subsequent remedies, exactly in the same way as questions of proprietary right are.

On the same grounds it may be urged that it would have been much better to allow the Settlement Officer to fix, either for the whole term of settlement, or at a progressive rate, as justice and the circumstances warranted, the rent which a tenant was to pay in cases where his right of occupancy was also declared[1].

[10] In the Baréli Settlement Report it is noticed that non-resident cultivators (páhi) could never *by custom* have rights, yet under the twelve years' rule they got them; the result has been that when a landowner's own sons grew up, and he wished to provide for them by giving them lands to cultivate on his own estate, he could not do so, because so many cultivators originally "páhi" had by the twelve years' rule become irremovable; and he had to send his own sons off his estate to work as "páhi" cultivators in another village, and so find the means of subsistence.

[1] Among the earlier revenue authorities of the North-Western Provinces, Mr. Bird advocated the fixing of rents with great force. "I have often wondered," he says, "that those who have employed their minds to investigate the principle of landed property in India should have overlooked this one marked,

It is obvious that a definite settlement of rents is the necessary concomitant of an occupancy right, since that right would be valueless if the rent could be so raised as to compel the tenant to go rather than pay it. This proposal proceeds, of course, on the assumption that the Rent Acts do not in fact afford a very satisfactory solution to the difficulty that arises in questions of rent enhancement. This assumption may, of course, be contested, and as the object of this work is in no respect controversial, it is altogether beyond my scope to attempt to set out even the main arguments on either side. But so much is certain, that the tests to be applied by the courts are neither certain nor easy of application. How much so this is the case may be judged by the controversy in Bengal embodied in the Great Rent Case of 1865.

I must say that I have not seen any valid objection put forward to the proposed reform that tenant-right and the consequent limitation of rent should depend (like the declaration of proprie-

prevailing, uninterrupted, prescriptive usage. It is in fact the only right recorded; yet so singularly do our associations govern our opinions that many persons consider raiyats (tenants) to possess no right at all, while they hesitate not to take for granted the rights of zamíndárs and taluqdárs.

. . . .

"The right which our Government has conferred on these last named persons, they and their officers are bound to respect.

. . . .

But they are no less bound to maintain that prescriptive right of the raiyat which they have equally admitted . . . .
and which Government have declared it to be their bounden duty to uphold." (He alludes to clauses in the Regulations XXVII of 1795 and XXV of 1803.)

It is impossible not to sympathise with the writer's generous desire to support the rights of the humbler classes, but it must be confessed that the argument is open to some objection, because here we have the Western terms "right," "prescriptive," and so forth, and the question is whether there is any real feeling of *right* as we understand the term, or whether the fixity of tenure and of the rent or produce share was not a mere *custom depending solely on circumstances*, namely, the absence of the possibility of competition, and the desire of the landholders to *keep* their tenants—circumstances which have now in great measure, if not entirely, passed away. It may also be said that the argument proves too much, since *all* classes of tenants had their rents fixed, whether of twelve years' standing or not; but it might be argued that those who do not belong to the confessedly privileged classes above alluded to, have a scanty claim to maintain a fixed rent under the totally different conditions which now obtain.

tary interests) on the investigation at settlement, and in such subsequent remedies in case of errors at settlement as the law allows [1].

§ 23.—*Actual provisions of the law regarding tenants.*

Act X of 1859 has long been repealed in the North-Western Provinces; it was first replaced by the Rent Act (XVIII of 1873), but this Act effected no radical change beyond improving the Rent Courts and their procedure. It kept the twelve years' rule (section 8) and the "formula" of conditional enhancement (section 12) as before. This Act has in its turn been repealed and replaced by Act XII of 1881. This Act does not alter the principles already laid down, and may in fact be regarded as merely a new edition of the Act of 1873, the whole having been re-issued as more convenient than publishing an amending Act [2]. The consequence of

[1] Mr. Fane, Mr. Bird's colleague, puts aside this proposal with the remark that it would be a sort of half measure between a "raiyatwár" and a "mauzawár" (village community) system, and that "it would establish a state of things in regard to the occupancy of land which would have no resemblance to the relation between landlord and tenant that has heretofore existed in India or in any country in the world." But this surely is to beg the question. *Would* such an arrangement violate the relations that existed *in fact?* And what does it matter whether it would resemble tenancy relations in any other country as long as it is convenient and just?

Mr. Auckland Colvin, on the other hand, directly supports the plan in the concluding words of his admirable Memorandum:—

"The remedy will," he says, "be found in arranging at time of settlement for the fair and full valuation of rents, not by law courts and vain formulæ of enhancement, but by the only officer competent to do it, the Settlement Officer, who stands to-day in place of Akbar's Amil, and who has to guide him a mass of data which he only can effectively handle. During the term of settlement the rents so fixed I would with certain exceptions maintain,—a far larger revenue would be gained with a smaller amount of heartburning. The treasury would be satisfied, and the people become content."

[2] The changes made will be found noted in the Statement of Objects and Reasons in the *Gazette of India* for March 13th, 1880. They are nearly all matters of detail, to remove difficulties that came to light in the six years' working of the Act (since 1873). One amendment (section 9) was more a matter of principle. It affirms the non-transferability of the tenant's occupancy right, either by voluntary or involuntary transfer, except to some member of his family who is a co-sharer. Previously it had been held that the right might be attached in execution of decree and sold, if the landlord was the decreeholder. Since the section prohibiting sale was made, it was

these provisions is that in most districts there are really four classes of tenants—(1) ex-proprietary tenants who were once proprietors, but have sunk to the grade of tenants; (2) those who had special and customary recognised privileges and hold at favourable rates[4], and these are the "natural" maurúsi or permanent occupancy tenants; (3) those who have acquired rights under the twelve years' rule; and (4) tenants-at-will.

These the Rent Act deals with as follows :—

(1) In permanently-settled estates, tenants[5], who have held since the settlement at the same rate (and uniform holding for twenty years raises a presumption that the holding has been since settlement), have a right to hold always at that rate, and they are called "tenants at fixed rates;" the right is heritable and also transferable.

(2) Next, ordinary (occupancy) tenant-right is secured to all persons who, having been proprietors, lose a part with their proprietary rights; they retain the right of occupancy as tenants in their former sír land, and for the purpose of the Rent Act "sír" includes not only what is recorded at settlement as sír, or what is recognised by village custom as the sír of a co-sharer, but also land which he has continuously cultivated for twelve years for his own benefit with his own stock, and by his own servants or hired labour. Such tenants are called "ex-proprietary tenants."

(3) All tenants who have actually occupied or cultivated land continuously for twelve years have a right of occupancy. But this is qualified by the following exceptions :—

(*a*) No sub-tenant gets the right, *i.e.*, if he is a tenant holding under an occupancy, a fixed rate, or an ex-proprietary tenant.

thought, in the landlord's interest, if he waived the privilege and asked that the right be sold, he might buy it. As section 9 at first stood, there was no doubt much to be said, legally, in favour of this view.

[4] Rent Act, section 20.

[5] The Act (section 4) also takes note of subordinate tenure-holders who are not exactly tenants (like the *patni* and other *taluqs* of Bengal), and declares that if, since the permanent settlement, they have held at the same rate, such rate shall be held to be fixed.

(*b*) No tenant gets the right in the proprietor's sír land.

(*c*) Nor in any land is he allowed to cultivate in lieu of money or grain wages.

Occupancy rights are not transferable except to co-sharers; they are heritable by descendants in the direct line, but not by collaterals, unless such collateral was a sharer in the cultivation of the holding at the time of the decease of the right-holder.

All tenants can claim leases specifying the land which they hold and the terms, and are bound to give counterparts or kabúliyats. The terms on which (A) the rent of tenants not being fixed-rate tenants can be enhanced, and on which abatement can be claimed; (B) the conditions under which ejectment can be had in all cases; (C) compensation for improvements; and (D) compensation for wrongful acts are all provided for. Next (E) distress is dealt with, and then (F) the jurisdiction and procedure of Revenue Courts in all matters relating to rents and tenancy, questions of ejectment, and so forth.

The produce of land is held to be hypothecated for rent, and the rent is a first charge. Distraint of crops standing and cut, but not removed out of the homestead, is allowed after service of a written demand; the produce must be that of the land for which rent is due, and for one year's rent only, not for older arrears: sale is effected by application to a properly appointed official.

The natural distinction of tenants according to local custom, is usually into resident ("chapparband," &c.), and "páhi," those who live in other villages and come to cultivate for the sake of the wages [6].

[6] In Baréli the chapparbands were managed by a muqaddam or cultivator's headman of their own. They had to pay rent and give one day's free labour to plough the proprietor's "sír" land, to give him also certain lands of "bhúsa" (chopped straw), a gharra or jar of sugarcane juice, &c.

Certain of them belonging to the higher castes, or to the same caste as the proprietors (Settlement Report, § 23) (a matter which often influences customary rents), are called "Rakmi," and pay at slightly lower rents than the others.

In Pilibhít (Settlement Report, § 93) the occupancy tenants are spoken of as "created by law." In Azimgarh (Settlement Report, § 305) occupancy tenants were partly created by law and partly had natural rights owing to "birt" grants and relics of former proprietary standing.

SECTION II.—LAND TENURES IN OUDH.

§ 1.—*Introductory.*

In the general sketch with which I introduced the study of the revenue systems of India to the reader, I have already briefly sketched the History of Oudh, as far as it concerns the land revenue settlement. I explained that the country was (as its predominant feature) held by a number of chiefs called taluqdárs, each of whom had a right over a larger or smaller group of villages[7]. I stated that all these chiefs, except five, had joined the Mutiny, and consequently had their rights forfeited. In 1858, by proclamation, they were pardoned and restored, and were then declared the proprietors of their estates; but were bound to admit certain rights and protective conditions, to be secured by record at settlement, for the communities over which they were superior proprietors. The "Oudh Estates Act, 1869," confers this proprietary title, and lays down rules of succession and inheritance in certain cases. Our study of the Oudh tenures will lead us, therefore, to enquire (1) what is the nature of the "taluqdárí" estate, and (2) what are the natures of the tenures and rights which subsist under the taluqdár in each village.

§ 2.—*Meaning of the term "taluqdár."*

For legal purposes, a taluqdár means a person whose name is entered in a list which under section 8 of the Oudh Estates Act (1869) is provided to be prepared. But if we enquire further what a taluqdár is, we can only say that the term literally means the holder of a taluq or dependency[8]. This is very indefinite, but no attempt to define further has ever been successful.

[7] Oudh Circular 19 of 1861, page 3. In Thomason's "Directions for Settlement Officers" (page 98) it is said that in a taluqdárí estate there are two proprietary rights—a superior and an inferior; that is true as a description of what usually is found in such an estate, but it does not define the nature of the superior or taluqdárí right.

[8] The word is derived from the root "'alq," implying connection or dependence. It is properly ta'alluq, ta'alluqa, &c.

The reason of this is that the tenure was *ex origine* indefinite in itself. It was indefinite as to the extent of the power over the villages forming the estate; it was also indefinite as to the area, *i.e.*, to the number of villages which were included in it.

At the same time, though we cannot give an accurate definition of what a "taluqdár" in the abstract, or in theory, is, we can clearly ascertain the actual features observed as existing in the different taluqdárs' estates.

The typical form of the taluqdárí is simply a late modification, under Muhammadan conquerors, of the old local Rája. Muhammadan power found it convenient to leave the old chief in possession of his estate—having much of his former power, administering justice, and commanding the militia, but being obliged to pay a fixed revenue or tribute to the Lucknow treasury. Such is the origin of the "pure" taluqdárs. Several of them may now hold separate estates, formed by the division of the original estate of the ancestral chief[9]. Sometimes a revenue speculator or other person would by court favour, acquire the same position,—villages having voluntarily put themselves under his protection as being the most powerful individual in the neighbourhood. In such cases, the powerful man was very often the hereditary owner of one or more villages; and then, when a group of neighbouring villages gathered under his protection, he became taluqdár over the whole[10]. In the days of misgovernment it was almost impossible for small independent holdings to maintain their position unaided[1]. They were obliged voluntarily to place themselves under some taluqdár as "deposit villages[2]." In many cases also the taluqdárs annexed them forcibly and made the villages pay their revenue to them; and villages

[9] From one-half to three-fourths of the revenue of the different districts of Oudh is paid by taluqdárs, holding for the most part large estates (Stack's Memorandum, 1880).

[10] See *Calcutta Review*, 1866—"The Taluqdárí Tenures of Upper India;" also Sultanpur Settlement Report, 1873, page 48, &c.

[1] Digest of Oudh Settlement Circulars, section V, § 11.

[2] *Id.*, V, § 12.

passed easily from one taluqdár to another, in course of the free fights which were the order of those unsettled days.

In some cases a military chief would be sent by Government to keep order, and be allowed to take the rents of a group of villages, in order to support his army; and he became the taluqdár[3].

From this it will be clear that, as regards the origin of the estates, the taluqdárí right was sometimes merely recognised by the governing power as an existing institution (in the case of the chiefs and their descendants), and sometimes was created by a direct grant.

All taluqdárs *now* hold by grant, owing to the resumption of all titles after the Mutiny, and the restoration of estates by specific sanads in March 1858[4].

§ 3.—*Nature of the estate.*

Next as regards the nature of the proprietorship or extent of the connection which the landlord actually held with each village; this varied considerably, according to circumstances. By the time the taluqdárs were established as an institution, the revenue was paid in money; in many cases, the collection of the lump sum was arranged for by employing a lessee who engaged to make good the necessary amount, together with so much more for tho taluqdár himself. Then the taluqdár had little else to do but sit at home and receive the rental or amount of the "theka," and pay in such part of it as was fixed (by custom or his grant) to the Government treasury. His virtual connection with the village was then but slight.

Still in many cases he maintained a connection in other ways. For one, if he was the old Rája of the pargana, he may have retained

[3] Bharaich Settlement Report, page 88. In the Akona estate the taluqdárí had been acquired seventeen generations ago by a "Risáldár," and for seven generations afterwards this military title was kept up by the descendants. It passed away, therefore, some 200 years ago.

[4] Digest, V, section 15.

much of his ancient privilege of management; he administered justice, decided disputes, and, in short, was very much what he had been in old days, only that now the State revenue went to Lucknow and he had the collection of it, and probably got a good deal besides the fixed sum he was bound to remit to the treasury. Then, again, under the Native rule, he had the disposal of the waste[5],—at any rate in all villages in which a zamíndárí community had not grown up. In the course of his revenue management, he had to look out for the efficient cultivation of his lands, and no one doubted his ability (his "right"), if he was strong enough, to put in this man and turn out that, in any village-holding he pleased. It naturally follows that the closer the connection of the taluqdár, the weaker would be the surviving position of the village-owners; whereas the less he interfered, the more complete the independence of the land-holders would remain.

"It is well known[6]," says the author of the Oudh Settlement Digest, "that the rights of the inferior proprietors" (*i.e.*, the villages comprising the taluqa) "will be found in different degrees of vitality. In some the taluqdár has succeeded in obliterating every vestige of independent right and making the former proprietors forget it too. In others . . . . he has reduced them to the condition of mere cultivators. In some cases, though he had originally brought the village under his sway by force or trickery, the taluqdár has permitted the representatives of the old proprietary body to arrange for the cultivation, receive a share of the profits, and enjoy manorial rights. In some, again, he has left them in the fullest exercise of their proprietary rights, paying only through him (but at a higher rate to cover his risk and trouble) what they would otherwise have paid direct to the State. These (latter) are what are called deposit villages, the owners of which voluntarily placed themselves under the taluqdár to escape the tyranny of the Názims" (Government revenue officers).

[5] Bharaich Settlement Report, page 88.
[6] Quoted from section V, § 12, page 93.

It must be remembered that, under the Native Government, the effect of the placing of a village in a taluqa, was to strike it off the revenue-rolls of the Government. The list only took account of taluqas, and of such villages as remained unattached to taluqs[7].

§ 4.—*Local extent of taluqa estates.*

As to the local extent of the estates in old times, as already remarked, it was uncertain: it consisted of as many villages as the chief originally owned, or had conquered and could keep, or on the number of deposit villages which gathered under the protection of a local magnate.

The extent of taluqa estates is now legally set at rest by Act I of 1869. The "estate" means the property acquired or held in the manner mentioned in section 3, 4, or 5 of the Act, or conveyed by special grant of the British Government.

Section 3 includes in the estate all villages which were settled after 1st April 1858 with the taluqdár, and for which a taluqdárí sanad was granted, and which were included in his kabúliyat, or were decreed to him (even if not so included) by order of Court. Section 4 covers the case of those loyal taluqdárs (mentioned in the 2nd Schedule) whose estates were not confiscated; the kabúliyat which they executed after 1st April 1858 shows the extent of their estate. Section 5 covers the case of any special grantee.

At settlement, also, a formal decree was recorded for every village, declaring that it was, or was not, part of such and such a taluqdárí estate[8].

The taluqdárí estates are not always large, though they generally are so. Some question was consequently raised as to whether the smaller estates were to be called taluqdárí at all. This question was decided in the affirmative, provided that their real nature was taluqdári[9].

[7] Administration Report, 1872-73, General Summary.
[8] Digest, section IV, §§ 24 and 29.
[9] Circular 19 of 1861, § 3.

§ 5.—*Other land tenures in Oudh.*

There are some small estates where there was a superior holder over the others (the result of an overriding of older rights), but *not* on a tenure analogous to the great chiefships. Here the estate was generally reduced to a single tenure estate (as we have seen was the practice in the North-Western Provinces), the superior being bought off with a cash allowance, and the settlement being made with the inferior[10].

There were also some villages in Oudh which did not come under the sway of the great taluqdárs at all, and I may dispose of them here. These remained as ordinary village estates, the settlement being with the actual proprietor.

§ 6.—*Sub-proprietors: (1) those entitled to a sub-settlement.*

The rights of the sub-proprietors or original holders under the taluqdár, were determined and provided for at settlement according to rules promulgated in 1866 and made law by Act XXVI of 1866[1].

As this has all been done long ago, it is now of no importance to the student to go into details as to the dates and periods of limitation which were fixed. I shall merely state in outline the principles followed.

The subordinate rights come under one or other of three categories—

(1) Sub-proprietor entitled to a sub-settlement.
(2) Sub-proprietor not entitled to a sub-settlement.
(3) Rights merely provided for under the head of tenant-right.

As to the rights of first order entitling to a sub-settlement, the claimant was required to show, first, that he was really proprietor over the whole of his claim[2]; and, secondly, that his proprietary

[10] Digest, section V, § 17.

[1] Called the Oudh Sub-Settlement Act, 1866.

[2] This would not be vitiated by the arbitrary seizure and alienation of a part of the land in favour of some person whom the taluqdár desired to favour: the state of the case, as a whole, would be looked to. (Digest, V, § 12, &c.)

right was recognised "pakka," as it was called, by the continuous enjoyment of a *lease* given by the taluqdár. What is meant by "continuous" was defined with reference to certain fixed dates which it is not now necessary to go into. The lease must have been connected with, and given in consequence of, the proprietary right, not as a "farm" to a mere tax-gatherer to realise certain revenues.

The right to sub-settlement might again be affected by the amount of profit which would remain to the claimant after paying the taluqdár his dues. If by the terms of the contract, the sub-proprietor got so little that, after paying the taluqdár, he had not more than 12 per cent. on the gross rental of the village, no sub-settlement would be made, and the sub-proprietor would then remain only in the second order of right. If the profits originally did not come up to 12 per cent., the under-proprietor retained his sír land, and if the profits of this were not equal to 10 per cent. of the gross rental of the estate, more land was assigned to him as "sír" so as to make up the profits to the minimum 10 per cent.

A sub-proprietor who was entitled to sub-settlement, because his profits came up to a minimum of 12 per cent., would be entitled also to have the rent payable by him under his sub-settlement fixed at such an amount as would bring his profit up to 25 per cent.; in short, *any one entitled to a sub-settlement at all, must get profits equal to 25 per cent. on the gross rental.*

§ 7.—*Sub-proprietors: (2) those not entitled to sub-settlement.*

We now come to the second order, sub-proprietors who had retained no general right over the whole of their original holdings, having no lease which recognised such right. These would usually, however, have maintained their right to some plots of land which would happen in several ways. The commonest was that the plots represented the "sír" or land which the sub-proprietor had always held as his own by inheritance, and for which he is paid either nothing or a low rent. "Sír" or nánkár[3] land was in all cases

[3] In Oudh these terms are generally synonymous.

the land which was left to the man when he was ousted from his original position[4].

Then, also, the taluqdár would make grants called "*birt*[5]" of the sub-proprietary right in certain lands. The birt was evidenced by a deed "birt-patr." It was often given for clearing or improving lands that had fallen out of cultivation[6]. The grantee might dig tanks, plant groves, and locate cultivators, and take certain dues from them. The grant was usually made for a consideration: in a few instances, however, "raiyati-birt," grants made by favour, not paid for, are found. It might be that the "birt" was created before the village came into the taluqdár's hands; these were recognised equally with those granted by the taluqdár[7]. The benefits which the grantee was allowed to get from the lands granted were various: they might be only that he was to pay nothing to the grantor, or that he was to get 10 per cent. (dah-haq) or one-fourth (haq chaháram) of the rents, the rest going to the grantor. A "sankalp" was a grant made like a "birt," only in connection with some religious or charitable object. Then also there might be "mu'áfi" or rent-free plots granted by the taluqdár, or by the State without reference to the taluqdár. Lastly, there was the proprietary holding of a plot called "marwat" (maraoti), a rent-free holding granted to the relations of retainers killed in battle.

§ 8.—*Oudh groves.*

But there is one other form of right which demands a larger notice, as it is of considerable interest, and might also give rise to a sub-proprietary right. I allude to the grove or orchard. The right

[4] Digest, V, § 20.

[5] *Id.*, V, section 22.

[6] Bharaich Settlement Report.

[7] Not so a "birt" created by a revenue lessee or rent-farmer (thekadár) of the taluqdárs, who *could* have had no proper authority to make such a grant. "Birt," it will also be remembered, is the common name for the grant made by a Rája, and many such may have existed before the taluqdár's time, or been made by the Rája in days before the taluqdárí system came into vogue.

to plant this is in itself a distinctive feature of proprietary right. A man might have neither "sír" land, nor a "birt," and yet have his right in a grove; for he might have planted it *without any one's permission*, and that shows that he must at one time have been owner at least of the land on which the grove stands.

The trees may be by custom owned separately from the land, so that if a *tenant* got permission (as he must in all cases) to plant a grove, he might own the trees, but the land would revert when the trees had died or were cut.

The following extract is taken from the Oudh Gazetteer[8]:—

"There is no village, and hardly any responsible family, which is without its plantation; and even members of the lower castes will think no effort thrown away to acquire a small patch of land on which to plant a few trees which shall keep alive their memory or that of the dearest relations to whose names they dedicate them. A cultivator who would quit his house and his fields with hardly a regret to commence life under better circumstances elsewhere, can hardly ever overcome the passionate affection which attaches him to his grove; and the landlord who gives up a small plot of barren land for this purpose to an industrious family is more than repaid by the hold he thereby gains over his tenant. As much as a thousand square miles is covered with those plantations, usually one or two acres each, but sometimes, when the property of a wealthy zamíndár, occupying a much larger area."

All these sub-proprietary rights giving a profit equal to not more than 10 per cent. of the gross rental of the estate, *viz.*, rights in sír and nánkár lands, birts, mu'áfis and other grants, and rights in groves, are recorded and secured at settlement, but no sub-settlement is made.

§ 9.—*Rights secured as "tenant-right."*

Where the occupant has not retained sub-proprietary rights, either with or without a sub-settlement, he is only recognised as a tenant.

If he could show that he was once proprietor, *i.e.*, within thirty years before February 13th, 1856 (the date of annexation), he might, however, be entitled to occupancy rights, and his tenancy would be heritable, though not transferable. He could claim a

[8] Volume I, Introduction, page 6.

written lease or "patta" specifying his terms, and his rent could only be enhanced on conditions laid down in the Rent Act (XIX of 1868). The Oudh law recognises no arbitrary or legal right of occupancy by mere lapse of twelve years or any other period; the Act X of 1859 has never been in force.

It will thus be seen, as the result of these protective provisions for under-proprietors and tenants, that taluqdárs may possess almost any degree of right in their villages, *i.e.*, their declared proprietary position may vary from a mere honorific title to full ownership, according as the villages under them have or have not retained their original status.

In some villages the under-proprietors may be all entitled to a sub-settlement; in others, they may have preserved partial rights which make them only sub-proprietors without such sub-settlement; in others, they may have sunk to the position of tenants with a right of occupancy; in others, they may have lost all vestige of right and become mere tenants-at-will.

§ 10.—*The profits of the taluqdár.*

In the same way, the profits, or portion of the rental which the taluqdár takes, will vary. In a simple proprietary estate, the general theory is that about one-half the estimated rental goes to Government and the other half to the proprietor; so that in the absence of other coincident interests in the land, the proprietor's profit is at any rate equal to the Government jama'.

But in a taluqdárí estate, owing to the existence of varying degrees of coincident or inferior interest in the estate, the taluqdár proprietor cannot get this amount[9]. He can only have the half rental (together with such assets as Government does not claim to share), subject to such deductions as represent the rights of sub-proprietors and others. For instance, in an estate where all the village owners are entitled to a sub-settlement,—here, as no person with a sub-settlement can get less than 25 per cent. of the

[9] Circular 2 of 1861.

gross rental, there would only remain about 25 per cent. for the taluqdár. If the sub-proprietors (with sub-settlements) were entitled to considerably more than 25 per cent., the taluqdár might have merely a nominal profit, were it not for the rule that in no case can the amount payable by the under-proprietor be less than the amount of the Government revised demand with the addition of 10 per cent.: that is, the taluqdár's profit on the estate must be at least 10 per cent. on the Government demand[10] (because the rest—the Government demand which he receives for the under-proprietor—he has to pass on to the treasury).

When speaking above of the different extent of the estates which different taluqdárs had acquired, I alluded only to the circumstances which made their holding consist of a greater or less number of villages or extent of land. But now we further see that, even in two estates nearly equal in extent, the amount of the taluqdár's pecuniary interest may be very different. The more the taluqdár had obliterated the old proprietary rights in the village, the more owners he reduced to the status of tenants, the larger his profits were. But originally, in Oudh the taluqdár paid much less to the State than the Bengal zamíndár did. For in Oudh, when he got in his rents from the villages, he often only paid in one-third, and in some cases not one-fifth or one-tenth of the whole to the State treasury; whereas the amount of the Bengal zamíndár's payment to the State represented nine-tenths of the rental of his villages. The zamíndár, however, made *his* profit by increasing the cultivation of waste (often a very large area) not included in the assessed area, and by levying cesses[1], which of course did not appear in the accounts as part of his collections.

Now, of course, the taluqdárs being actually proprietors of the estates, and not State grantees or contractors for the revenue, the Government never (save as a favour in exceptional cases) takes less than the 50 per cent. of the "net assets" which it levies

[10] See Act XXVI of 1866, Schedule, Rule VII, clause 3.

[1] See Financial Commissioner, Panjáb's letter to Chief Commissioner, Oudh, 19th June 1865, alluding to Sleeman, Volume II, page 209.

in all North Indian Provinces on all proprietors. Hence in theory the taluqdárs get relatively less than they did formerly in the way of actual percentage of the revenue. On the other hand, owing to the increased value of the land, and the consequent great increase in the absolute amount of the revenue, their profits are often (absolutely) much larger.

Section III.—Panjáb Tenures.

§ 1.—*Points of resemblance to the N.-W. Provinces.*

The Panjáb is also a land of village communities. I therefore proceed with this section briefly describing the Panjáb tenures, on the understanding that the student will have read the previous section specifically devoted to the North-Western Provinces.

The general description of the different kinds of community there given, applies equally to the Panjáb. And even the remarks made on the origin of the communities are not altogether inapplicable. There are no doubt communities whose origin is comparatively recent, and which are derived from the dismemberment of an earlier State, and others (of still later origin) are found to be constituted by groups of descendants of a revenue-farmer of former days. There are also communities called "Bhaíáchára" which do not recollect to have had any original joint ownership at all. But there seems in the Panjáb to be a much more important source of origin for the villages, in large tracts of country, than any of these; in the Panjáb we are able clearly to trace the origin of the village communities to the settlement of *tribes* of a republican or democratic character, indicating a later Aryan type, and to the partition of the country, first among the tribal sections, and then among groups of families of those sections.

§ 2.—*Points of difference.*

As regards the North-Western Provinces and Oudh, the evidence, as far as we can go back, shows the country portioned out into small States on the usual model of the old Hindu State, a Rája

at the head of each, and the Ráj rights well defined: it shows that the villages were groups of cultivators who had not any connection other than that produced by the common management of a headman. Each cultivator regarded himself as the owner of his own holding. But we found that in time the sub-division of the Ráj, the grant of what we may call jágírs, and the recognition of right in favour of certain powerful owners, produced a complete proprietary right in certain local areas, and when this was jointly succeeded to by the heirs, a joint body of owners was found claiming absolute right over the whole; and thus arose the "zamíndárí" village, which being divided became "pattídárí."

The evidence did not take us back beyond the State and the Ráj. This was the form of society which was known to the authors of Manu's *Institutes* and is generally explained to be the normal institution of the earlier and less military Hindu-Aryan races. The tribal settlements of the Panjáb are attributed to races of the same stock indeed, but of later date, and more warlike and republican propensities. These tribes, when they settled as *peoples*, divided the country and gave rise to strong joint-village communities, such as we find in the Panjáb. When they only appeared in *smaller bands, as conquering armies*, they established the sort of feudal over-lordship over the aboriginal inhabitants which we shall find to exist in Rájputána and other parts of India, but were not numerous enough to found joint-villages.

Now, in the Panjáb, the evidence of the occupation of the land by tribes and clans, who divided it out according to tribal custom, is very strong. It appears also that villages divided into "tarafs," "varhis," or sections sub-divided into "pattís," are the result of such tribal division of the land[2].

[2] In the Panjáb the "tribe" is designated by the Arabic term "qaum" and the "clan" by "got," the clan being ordinarily larger than a mere village brotherhood. "A *got*," says Mr. Tupper, "may extend over six or seven villages, or even over two hundred or perhaps more, whilst a single village may be the germ of a new *got*, or may comprise in its circle proprietors of different *gots*." In the primitive Panjáb village (where a tribal settlement is traceable) the village would consist of men of the same *got*, or of men of the same *family* in the *got*.

This evidence is collected in Mr. Tupper's valuable book[3], in which extracts from a great number of Settlement Reports are given, preceded by valuable explanatory remarks.

§ 3.—*Tribal settlements.*

In the Panjáb, the tribal groups appear to have claimed joint possession of the lot which the tribal authority assigned to them, and had an exclusive right to the whole of the land within the lot, thus giving rise to joint bodies, which might be larger or smaller, but were truly joint—being all connected by blood. Very often the sub-division was marked by the tenure of particular families, the head of which gave a name to the "taraf," while the "pattís" were the shares of the descendants in the first degree to them. The joint ownership, of course, in time exhibited all the tendency to severalty which is the characteristic of village communities in India generally.

In some cases there seem to have been large tracts which were held on thousands of shares. Whenever circumstances, such as peculiar local arrangements for irrigation, did not fix the division of land once made, there was a custom (*vesh* or *waish*) of periodically redistributing the lots. But though there are indications that this might be done as between clan and clan, it seems that practically the custom extended to the land within the minor holdings or sub-divisions, and not to the major or clan allotments. In time even this ceased, and then the shares became divided once for all, and gradually individuals and families got to hold their own lands separately.

Allowing then for the communities which arose in later days, as in the North-Western Provinces, *the original settlement of tribes* is put forward as the true origin of the great body of the

As regards village divisions, the taraf and the pattí are commonly met with. Sometimes a village is divided only into a number of pattís without tarafs. In some cases the pattí is again sub-divided into "thúlas" before we come to the kháṭás or individual holdings.

[3] "Panjáb Customary Law," 3 Vols. (Government Press, Calcutta, 1881).

villages in the Panjáb proper. The tribal settlements were joint from the first, but gradually went through different stages of modification; ancestral shares were forgotten and altered, the estates ceased to be held on any scheme of shares; and now the official terms *zamíndárí, pattídárí*, and *bhaíáchára* are applied in settlement papers, to describe the different stages in which the villages are to be found.

Thus, Mr. Tupper writes[4]: "The revenue terms with which we are most familiar—*zamíndárí, pattídárí*, and *bhaíáchára*—themselves epitomise the history of landed property in this part of India. The land is first held in common, and then on ancestral or customary shares; later these are undistinguished or forgotten, or deliberately set aside, and possession becomes the measure of the right, or, in other words, severalty is fully established."

In speaking of the North-West Provinces villages I alluded to this view, which is eminently probable in the case of some villages. But, as I have already remarked, it cannot be concluded that all bhaíáchára villages were once joint, and that the present form is the result of decay or disintegration.

While, on the one hand, it is quite beyond dispute that some villages, now bhaíáchára, *were* once joint, and as proved by the fact that some traces of ancestral shares still survive in the distribution of certain profits of the estate, on the other hand, it is equally certain that the villages, called in Oudh and the North-West Provinces bhaíáchára (and many others of the same type all over Bengal and Central and Southern India), never, as far as the evidence goes back, were jointly held: from the first they consisted of aggregates of cultivators held together by the institutions of the Ráj and by the customs of the village, but on a principle essentially different from that of the united or joint village.

On the whole, therefore, I think we must come to the conclusion that while tribal settlements in the Panjáb seem to account for the origin of most joint villages, we may expect to find exceptions,

[4] "Punjab Customary Law," Vol. II, page 2.

especially in the districts bordering on the North-Western Provinces. In the Himalayan States, again, we have a different state of things,—namely, an organisation of Rájput chiefs, the result of a tribal conquest, not of tribal settlement.

On the whole, then, we shall find the Panjáb villages derived from the following sources :—

(1) Tribal settlements resulting in village communities.
(2) Later village communities formed out of the descendants of grantees, revenue-farmers, and others, who displaced the original village proprietors; or villages have a special origin in waste land grants (as in Firozpur, Sirsa, &c.)
(3) Villages in districts not occupied by tribes, as in the Panjáb proper, and being of the same origin and history as those of the Gangetic plain.
(4) Non-united villages under Rájput rulers in the Hill States (Kangra, Simla States, &c.)

Whatever may be the true origin of the differences thus indicated, the effect of circumstances, and especially of our Revenue systems, has now resulted in the general existence of joint-village communities over the Panjáb. In a province which has a Pathán frontier and a frontier of Biloch tribes, which includes also the Himalayan States, the Panjáb proper and a bit of Hindústán, it will naturally be expected to find many differences of tenure.

§ 4.—*Present condition of the villages.*

The joint villages now form the leading feature, and therefore I must first offer some remarks on them[5].

"The great mass of the landed property in the Panjáb is held by small proprietors, who cultivate their own land in whole or in part. The chief characteristic of the tenure generally is, that these proprietors are associated

[5] The account of the village communities which follows was written by Mr. D. G. Barkley, and appeared in the Panjáb Administration Report for 1872-73.

together in village communities, having, to a greater or less extent, joint interests; and, under our system of cash payments, limited so as to secure a certain profit to the proprietors, jointly responsible for the payment of the revenue assessed upon the village lands. It is almost an invariable incident of the tenure, that if any of the proprietors wishes to sell his rights, or is obliged to part with them in order to satisfy demands upon him, the other members of the same community have a preferential right to purchase them at the same price as could be obtained from outsiders.

"In some cases all the proprietors have an undivided interest in all the land belonging to the proprietary community,—in other words, all the land is in common, and what the proprietors themselves cultivate is held by them as tenants of the community. Their rights are regulated by their shares in the estate, both as regards the extent of the holdings they are entitled to cultivate and as regards the distribution of profits; and if the profits from land held by non-proprietary cultivators are not sufficient to pay the revenue and other charges, the balance would ordinarily be collected from the proprietors according to the same shares.

"It is, however, much more common for the proprietors to have their own separate holdings in the estate, and this separation may extend so far that there is no land susceptible of separate appropriation which is not the separate property of an individual or family. In an extreme case like this, the right of pre-emption and the joint responsibility for the revenue in case any of the individual proprietors should fail to meet the demand upon him are almost the only ties which bind the community together. The separation, however, generally does not go so far. Often all the cultivated land is held in separate ownership, while the pasture, ponds or tanks, &c., remain in common; in other cases, the land cultivated by tenants is the common property of the community, and it frequently happens that the village contains several well known sub-divisions, each with its own separate land, the whole of which may be held in common by the proprietors of the sub-division, or the whole may be held in severalty, or part in separate ownership and part in common.

"In those communities with partial or entire separation of proprietary title, the measure of the rights and liabilities of the proprietors varies very much. It sometimes depends solely upon original acquisition and the operation of the laws of inheritance; in other cases, definite shares in the land of a village or sub-division, different from those which would result from the law of inheritance, have been established by custom; in other cases, referenceis made, not to shares in the land, but to shares in a well or other source of irrigation; and there are many cases in which no specified shares are acknowledged, but the area in the separate possession of each proprietor is the sole measure of his interest. It is sometimes the case, however, that while the separate holdings do not correspond with any recognised shares, such shares will be regarded in dividing the profits of common land, or in the partition of such land; and wells are generally held according to shares, even where the title to the land depends exclusively on undisturbed possession."

Speaking of the village communities generally, 3,295 are joint or zamíndárí estates, 3,652 are pattídárí, divided in ancestral or modified ancestral shares, 9,542 are bhaíáchára, or held in lots, having no relation to a system of shares, while the large number of 17,215 (something less than one-half of the whole) are held partly in severalty and partly in common; that is, in official language, they are either imperfect pattídárí or imperfect bhaíáchára. In them, as a rule, the holders of severalty manage and take the entire proceeds of the holdings; the revenue and other expenses are met by the proceeds of the land held in common; if these proceeds are insufficient, the deficit is made up, according to the nature of the estate, by shares corresponding to the shares in the severalty, or by a rate on the holdings.

§ 5.—*Measures for the preservation of the communities.*

Before I proceed to describe a number of districts where the tribal origin is very distinct, I must mention that in the Panjáb much greater stress is laid on the preservation of the village bodies than elsewhere. Perfect partition is a process by which not only are the holdings separated, but the joint responsibility is severed, so that the perfectly partitioned lands form new and separately responsible "mahāls." This process is (unlike the North-West Provinces) not allowed as a rule.

It can be arranged at settlement, if the Settlement Officer thinks it necessary; but at other times only under exceptional circumstances. Moreover, a very strong right of pre-emption is recognised, and especially legalised by the Panjáb Laws Act IV of 1872[*] (as amended by Act XII of 1878).

[*] This, of course, tends to hold the body together, since, if a member of the body sells, the others have a right of refusal, before an outsider can get in.

The order, as stated in Act XII of 1878, is that the right of pre-emption (1st) belongs to co-sharers in an undivided estate, in order of near relationship; (2nd) in villages held on ancestral shares, to co-sharers in the village, also in the order of relationship to the vendor; (3rd) if no relation claim, to the landowners of the patti; (4th) to any individual landholder in the patti; (5th) to any landholder in the village; (6th) to occupancy tenants on the property; and (lastly) to tenants with

We shall see also presently that not only was the joint responsibility of the villages theoretically preserved as much as possible, but it has been created artificially in Kangra, Dera Gházi Khán, and elsewhere, where the joint-village system did not originally exist.

§ 6.—*Nature of Tribal Settlements ;—how far joint.*

It is easy to imagine a tribe coming into a district suitable to cultivation for the most part, and either finding it unoccupied or else driving out the inhabitants; they would at once proceed to allot the whole area, first into "iláqas" or major divisions for the tribe or clan, then into smaller allotments, the ultimate or third subdivision of which again was into unit-holdings for individuals or single families.

The "iláqa" is looked upon as the common property of the tribe, in the sense that any lot-holder has to give up and take another at the bidding of the tribal authority or the established custom. How far is was joint, beyond this subjection to a common authority and the necessary union for defence and for society, it is difficult to say.

I hear, for example, of a great area in one district held by a tribe in 36,000 shares; but does that mean that the whole proceeds of cultivation were thrown into a common stock, and after paying the common expenses the profits were divided? Probably not; but however this may be, and whatever may have been the true form of the management of these tribal allotments of land, the outcome of it has been (and it is this the students of this Manual are concerned with) that a number of really joint and ancestrally connected village-estates are the modern representatives or survivals of the system.

occupancy right in the village. In all cases it belongs to Government if it is land occupied by trees which are Government property. It will be observed that in some cases where relations and pattidárs refuse, any landholder has the right; this gives great opening to money-lenders and others to increase their lands. Once having got a plot, they eagerly exercise their right of pre-emption on all contiguous lands, and it is not difficult to secure it if the prior claimants are poor, or can be persuaded not to assert their claim.

§ 7.—*Principal tribes.*

The tribal settlements which I have been describing seem to have been governed by "jirgas" or councils of elders, not by Rájas, Chiefs, or Princes.

The tribes that most prominently appear in evidence are (1) the tribes on the frontier, and (2) the great Ját and Rájput tribes of the Panjáb proper. In the Rohtak district and in Jálandhar, for example, completely joint villages, thoroughly understanding a joint responsibility, are abundant, and they are chiefly "Hindu Játs." "Throughout the Delhi territory and the Panjáb proper up to the Indus," writes Mr. Tupper, "the Játs are spread in great numbers all over the country. At the last census they reached the total of 2,187,490, being chiefly Hindús and Sikhs towards the east, and Muhammadans westwards. They are agriculturists; their organisation by clans is notorious, and they are habitually grouped in village communities. Wherever Játs are to be found, their tribal influences and kinship are still at work[7]."

It should be remembered that it was where the Rájputs settled *as a people* they exhibited all the features of land allotment and village divisions which I have been describing. It was where they gained a footing, not as a tribe, but as a conquering army only, and as furnishing rulers to a conquered country, that they established the peculiar quasi-feudal organisation which we associate with their name. How far the Rájputs ever established kingdoms in this way in the Panjáb, it is now difficult to say. They did so, we know, in the hills, and they seem to have done so in other parts, at a date much subsequent to the tribal settlements.

In the Gujrát district we find the "Chibs"—a Rájput tribe originally holding the country in petty chiefships. Under Ranjít Singh, the chiefs lost their power, and only held such villages as were originally their sír or immediate holding, and in these the families formed *joint bodies of proprietors.*

[7] Tupper, Vol. II, page 86.

In the same way the Sikhs themselves would no doubt have founded small states or chiefships all over the country, as they did Cis-Sutlej, but for the strong and unifying power of Ranjít Singh which intervened to prevent the growth of such chiefships, keeping them down to the level jágírdár estates which might gradually disintegrate into a number of separate village proprietary bodies.

§ 8.—*Tribal tenures on the frontier.*

It must be readily admitted that the theory of a tribal origin to village communities is most clearly supported by the tenures observed on the Pathán frontier.

In **Hazara** we find the tribes who occupy the land are for the most part of recent origin: their advent does not date further back than the eighteenth century. The whole country was divided into "iláqas," which were, in fact, the "mark" or land allotted to the tribe. This they, as usual, called the "wirásat" or inheritance, though obtained by conquest. There was also anciently a "waish" or "vesh"—periodical redistribution of land—which we shall find more perfectly recollected in other districts.

In **Peshawar** the tribal land was called "daftar" and the share "bakhra." Where there was no irrigation, which naturally gave a fixity to the division, the share consisted in a proportion of each kind of land—good, medium, and bad. The land was divided into villages, and the villages into "kandis" (corresponding to the "taraf" of the Panjáb). There was a periodical "vesh" or redistribution of holdings [8].

[8] This re-allotment is a regular feature in the early customs of landholding in many countries, where inequality of soil renders it necessary, so as to give each a turn.

The whole of the greater lots or divisions are held by the sections in turn, and inside the larger divisions the land is divided into strips of each quality, so that it may be classified and each hold, some good, some bad, and some medium. In Williams' "Rights of Common" (p. 66) this practice is described as obtaining in the "vills" or tribal lots in Early England. A map is there given showing a "vill" divided into strips for the purpose of classification, and successive holding.

The custom will be noticed again in the Chhatísgarh Division of the Central Provinces, and was there practised not only among tribes on their allotments, but in

The Bannu district also clearly affords evidence of the villages resulting from a tribal conquest and division of the land. The tribes here are recent, the oldest of them not being older than 500 years; and they seem to have come down on and reduced to serfdom the original inhabitants who were pastoral Játs. The tribes seem to have divided the land by lot, according to ancestral shares. There are traces of a division into "tals," the area of the tribe, "darra," the holding of a group of families, and "lichh," the individual or one-family holding.

cases where a number of settlers under a headman had occupied a tract of land by agreement and compact. In these districts the headman got to be the proprietor, and his descendants formed the joint proprietary community; the other settlers were regarded as privileged sub-proprietors.

The tribal redistribution is well described in the following extract from the Panjáb Administration Report of 1872-73:—

"In some cases the separate holdings are not permanent in their character, a custom existing by which the lands separately held can be redistributed in order to redress inequalities which have grown up since the original division. Between the Indus and Jumna this custom is rare, and is probably almost entirely confined to river villages which are liable to suffer greatly from diluvion and have little common land available for proprietors whose separate holdings are swept away. Even in river villages it is often the rule that a proprietor whose lands are swept away can claim nothing but to be relieved of his share of the liabilities of the village for revenue and other charges.

"Trans-Indus, however, in tracts of country inhabited chiefly by Pathán population, periodical redistribution of holding is by no means uncommon, and the same is stated to have been formerly the case in some of the villages of the Pathán iláqa of Chach, Cis-Indus, in the Rawalpindi district. The remarkable feature in the redistribution Trans-Indus was that they were no mere adjustments of possession according to shares, but complete exchanges of property between one group of proprietors and another, followed by division among the proprietors of each group. Nor were they always confined to the proprietors of a single village. The tribe, and not the village, was in many cases the true proprietary unit, and the exchange was effected at the intervals of 3, 5, 7, 10, 15, or 30 years between the proprietors residing in one village and those of a neighbouring village. In some cases the land only was exchanged; in others the exchange extended to the houses as well as the land. Since the country came under British rule, every opportunity has been taken to get rid of these periodical exchanges on a large scale, by substituting final partitions or adjusting the revenue demand according to the value of the lands actually held by each village; but the custom is in many cases still acted upon amongst the proprietors of the same village, though probably no cases remain in which it would be enforced between the proprietors of distinct villages."

In **Dera Ismail Khan** there are several tribes—Bhittání, Kundi, Gandapur, and Bábar.

These are all now said to form bhaíáchára communities, but it seems very clear that after the allotment of the country into plots or estates for groups of families, there was no further common management. Among the Bhittánis the "nallas," or plots used by groups, were aggregated into "mauzas" for revenue purposes.

Before land became valuable, the people of a "nalla" had no objection to outsiders coming in and cultivating a bit of the waste.

The people in a "nalla" appear to be a mere aggregate of holders, though now that land is worth having, they claim all the land in the "nalla."

Among the Gandapurs it is noticeable that part of the country is held in common by the whole tribe, there being 36,000 shares in the tract.

It is here also distinctly noticeable that a periodical division was or was not customary, solely according as circumstances made it necessary; where irrigation existed, it was not needed, and did not appear.

In **Dera Ghazi Khan** there is the same tribal division of lands, but the regular type of village community did not grow up.

Indeed, I cannot help observing, that while all these cases exhibit clearly a tribal division into minor or major shares, the further sub-divisions of these—the modern villages—are nearly always held as groups of individual holdings; although they are all *called* "bhaíáchára villages," and there was an original ancestral connection between the holders.

In Dera Ghází Khán we seem to have a clear case where, though tribes settled and the "tumándár" of the tribe allotted the land, each member held his land in complete independence. Here the conditions were similar to those of Ajmer; permanent occupation was not possible without building wells or embankments to store the water of hill streams; here there was little or no clearing of jungle to give an origin to a heritable right in the holding; but the construction of the well or the embankment was

the act that gave a customary title. In all such cases, there are of course joint holdings of plots of land, but not joint holdings of whole villages or considerable areas. The returns would, however, show that there are a very few such estates—49 out of 749; but these may easily arise; for some families that are powerful, fortunate, and wealthy, manage to extend their holdings to a considerable extent, and this group is large enough to become recognised and settled as a joint estate [9].

§ 9.—*Tribal settlements in the Central districts.*

The **Shahpur** district affords a further illustration of this. The country had originally been divided out, and "tarafs" or lots, locally called "varhi," were assigned, and the pedigree of the holders was known. At settlement possession did not correspond with such shares: the villages were then classed as "bhaiáchára."

In **Rawalpindi**, in spite of the disturbing influence of the Sikh rule, the original constitution of the villages has survived. The tribal division appears to have been uniform, and here, in many instances, the villages were divided into "tarafs," and the tarafs into "pattís;" each pattí is named after an ancestor of the present occupant. In parts the different tarafs of the villages are held by different tribes.

In **Jhilam** "it is the custom for the Gakhars and other superior tribes to live in a large central village, with all the village servants, while the Ját cultivators build small hamlets (called 'dhok' or 'chak') of from one to twenty houses all round." In the process of time, and under the Sikh revenue system, they became separate estates.

In this district, the Settlement Report remarks :—

"The column for the total area shows some villages which are small counties. As they are *boná fide* single estates, held by one joint and undivided proprietary body, their size is really very great. Lawa contains over 90,000 acres and extends over 4 miles by 16. Thoha has nearly 50,000, and is 10 miles by 12. Kundwal, again, stretches for 9 miles and contains 35,000 acres. Another great village—Lilli—is now split up into four independent villages, but it was once all one and contained 22,000 acres. The people are all descended from a common ancestor. There are a number of villages, each with above 10,000 acres."

[9] Settlement Report, 1875, § 215, page 32, as regards the tract called the Pachád and in the Sind villages.

The Settlement Report of **Gujrat** contains a map showing powerful clans holding almost unbroken tracts of country. There is a great Gújar tract and a Ját tract, and a smaller tract of the Chibs. The Chibs were Rájputs who conquered the country, and appear to have possessed it as chiefs merely; but the petty kingdoms were suppressed by the Sikhs, as I have already noticed, and the descendants that now remain appear as holders of scattered villages only.

It was said, however, that in these Gujrat villages joint responsibility for the revenue was a novelty, but the system was easily introduced, because the cultivators in one community were of common descent. They had managed the village in common as far as fines and contributions were concerned. There were cases where the village had been founded by one man, and his descendants became joint proprietors; "but," says Mr. Tupper, "Pathán devastation and Sikh misrule reduced squatters and inheritors to the same level; ancestral shares were forgotten or disused. Responsibilities were imposed on the founder's kin and on immigrant outsiders indifferently." Under our settlement, an attempt was made to adjust the different classes of rights, by giving the settlers a status of inferior proprietor (málik-kabza or málik-maqbúza) with no share in the common lands. It is not always, however, that the village had this origin from a common ancestor; but the Settlement Report refers to the troublous times of Ahmad Sháh Dúrání, and supposes that at that time, distinct hamlets collected together for defence, and being all of the same clan and possibly in some cases related, they naturally held together.

In the **Gujranwala** district there was again an ignorance of joint-revenue responsibility; but Mr. Tupper points out that there is ample evidence of clans occupying contiguous areas of country.

In **Sialkot** the Settlement Report states that the country is almost "universally held by tribes." A considerable number is stated, but about fifteen only are prominent, and of the whole many are sub-divisions of larger tribes (the Játs here show some thirteen sub-divisions).

In **Lahore** there is found an interesting relic of an old tribal institution known as a "Chaurássi," or group of eighty-four villages. A few of the villages now only survive, held by Bhúlar Játs.

The **Gurdaspur** district, Mr. Tupper considers, shows evidence of tribal distribution, and an interesting extract from the Settlement Report is given which shows how many influences are at work to destroy the old system of *shares* where it really existed, and to substitute possession.

I must allude also, in this connection, to the Una pargana of Hoshyárpur which has been separately settled of late years. Here there is a congregation of Brahman villages in one iláqa, and these are often joint in tenure. The Rájput villages which form a fair proportion (239 out of 653) exhibit holdings by shares; the miscellaneous villages, probably consisting of groups of disconnnected settlers, are usually "bhaiáchára. In these probably there was no real community at all.

The **Jalandhar** district has been noted as one where the villages are really joint and thoroughly understand the principle of joint responsibility. Here the villages are most frequently Ját.

In **Ludiana** it is said that villages held on ancestral shares are the most common. In some cases the "pattís" only are divided; within the pattí there is joint holding.

In **Ambala**, again, the villages are mostly bhaiáchára, but this district was specially the scene of the incursions of various Sikh chiefs and clans before the whole had been welded into a power under Ranjít Singh, and therefore the original villages were probably much interfered with. This will be again alluded to further on.

The **Delhi** districts often exhibit very perfect communities, mostly of Játs, as in Rohtak.

§ 10.—*Joint villages having their origin in the growth of families, not in tribal settlements.*

In almost all the districts it will not be supposed that the tribal settlements have survived all the troubles of conquest and change

of dynasty which have passed over the districts, so as to show an unbroken series of tribal villages. It is now chiefly by the prevalence of certain castes and by the traditional customs of the people, that we are able to trace their early history. In the midst of them may be found villages of modern origin, which are held by groups of descendants from some revenue farmer, some Sikh grantee, or some powerful chief who had conquered an area of country (at a date subsequent to the formation of the tribal settlement), and whose rule has now left no mark but the proprietary right in certain villages owned by his descendants.

Whether the bhaíáchára villages in the districts nearer Hindústán may not be relics of the older Aryan-Hindu races, such as formed kingdoms in the North-Western Provinces and Oudh, I am not able to say. But it may well be that some districts have a history such as I have traced for those provinces where the villages are in the first instance "non-united," but zamíndárí rights grow up in the midst of them.

In the districts of the south-east Panjáb, however, there are villages which have an origin traceable to quite recent grants and settlements of waste land.

In Sirsa joint villages are very common, but, as might be expected, they are of recent origin. The country had been devastated by wars and originally was not favourably situated as regards rainfall, so that, when it was re-peopled on the restoration of settled government, it was so mostly by grantees whose families of course became joint-owners. But it is here noteworthy that when more than one man started a village, if they were related, their shares were not what they would have been on the purely ancestral scheme, but all the founders took equal shares. In this district also these joint estates show the usual and natural tendency to break up and to go by possession, not by shares [10].

It is curious to observe that in part of Dera Ismail Khán, called the Makkalwad, villages arose out of joint associations

[10] See Mr. J. Wilson's letter quoted by Mr. Tupper (Vol. II, page 42).

to cultivate; two or three leading men would get a grant and invite a number of persons to join them. The cultivation was carried on by means of irrigation from streams, for which purpose the fields have to be banked round. But here, though the term "'ala málik" is applied, the original holders claimed no superior proprietary right or rent charge from the others. The headmanship and its privileges went in their families, but otherwise the other settlers got a share in the land on precisely the same footing, and the land being now often divided into shares the estate is called "pattídárí." In some cases the shares fixed (on the basis of the number of "joras" or pairs of oxen brought to the settlement) have become altered by circumstances, and the village is called bhaíáchára. In some cases the smaller villages are held by the descendants of one man, and then there is a joint holding.

I must also mention the Firozpur district as another case in which villages arose without any tribal settlement, and as the result of grantees bringing waste under cultivation.

In this district (which is a great grain-producing one) it was found at settlement (1855) that many villages of Játs could be traced to an origin not more than sixty or seventy years previous, and that the institution was due to a certain number of men getting a grant from the "Kárdár" (Sikh revenue official) to found a new village in the waste. Having reached their location, and decided on a site for the village, the land was at once divided by lots into major shares or "tarafs," then into "pattís," the pattís into "laris," and then, according to the number of ploughs, bought by the individual members of the company[1]. The pressure of Sikh taxation and other accidents caused these shares in many cases to be lost, and actual holdings to supersede and be maintained. It appears to have been chiefly where land was valuable and there were distinct groups among the settlers that

[1] Here it will be observed that we have an initial division which probably partly followed ancestral connection; the settlers would naturally form groups, which may have been connected by relationship; such relations would naturally congregate in a pattí and might or might not hold it jointly.

the formal partition took place. In other cases, the settler simply took and cultivated the plot which came to hand and kept what he could.

These villages have come under the official classification of pattídárí and bhaíáchára like any others.

Before leaving this district, I cannot help stating the distinct instance it affords, *in other parts*, of tribes settling and giving rise to joint communities. Parts of the district are held by Dogras (near the river) and the Naipáls, occupying the iláqa of Makhu and part of Fatíhgarh. The Dogras seem to have curtailed the area of the Naipáls. Both are tribes of Rájput descent. It would seem that neither tribe divided the land into shares, but held it, the report says, "in common." I cannot ascertain whether in this case they actually held and cultivated the land themselves after having driven out the previous occupants [2], or whether they merely subdued them, leaving them in occupation of the land and treating them as tenants; in that case the tribesmen would naturally settle as proprietors over the different village groups and jointly take the payments exacted from the tenants, and divide it without any necessity for allotting land shares. If this was the case, it closely resembled the effect that the incursions of Sikh misls or fighting companies (for they were not true clans) had on the villages in Ambála, though there the Sikhs did not become joint proprietors of the land, but joint over-lords, receiving a payment from the original village body or group, as I shall describe further on.

In the **Gurgaon** district there were very few villages which could be traced to a remote past; the majority were recent villages, granted to individuals whose families and descendants formed the joint communities of the "zamíndárí" type[3], and with them came inferior castes, and perhaps some men of the founder's caste, and these received either a share in the village, or became

[2] Settlement Report quoted in Tupper's Vol. III, page 40.
[3] See Mr. Wilson's letter in Tupper's Vol. II, page 42.

privileged tenants, as the case might be. There is now a very great tendency in the villages to become separate.

In some cases the villages were formed by voluntary associations of men of different caste.

§ 11.—*Creation of joint responsibility to Government.*

It may, perhaps, surprise the student who has seen in how many different ways what are now regarded as joint villages grew up, that it was possible to make the people accept the principle of joint responsibility for the Government revenue, where there was no original bond of common ownership between them. It may be replied, in the first place, that the grant of a common lot of waste surrounding the group of holdings as in Kangra may have had a powerful influence in reconciling them to it: but probably more than this, the assessment is, as a rule, easily paid, and the joint responsibility is rarely enforced; hence it becomes a very shadowy thing and does not appear formidable, even if it is thoroughly understood when first introduced[4].

[4] The Administration Report of 1872-73 makes the following remarks on this subject (page 13):—

"In the Simla Hills and in the more mountainous portions of the Kangra district, the present village communities consist of numerous small hamlets, each with its own group of fields and separate lands, and which had no bond of union until they were united for administrative purposes at the time of the Land Revenue Settlement. In the Multán Division, again, while regular village communities were frequently found in the fertile lands fringing the rivers, all traces of these disappeared where the cultivation was dependent on scattered wells beyond the influence of the river. Here the well was the true unit of property; but where the proprietors of several wells lived together for mutual protection, or their wells were sufficiently near to be conveniently included within one village boundary, the opportunity was taken to group them into village communities. The same course has been followed in some parts of the Deráját Division, where small separate properties readily admitting of union were found. These arrangements were made possible by the circumstance that the village community system admits of any amount of separation, *i.e.*, as (among themselves) of the property of the individual proprietors, and by care being taken that in the internal distribution of the revenue demand it should be duly adjusted with reference to the resources of the separate holdings. They also, in general, involved the making over in joint ownership to the proprietors of the separate holdings of waste land situate within the new boundary in which no private property had previously existed."

§ 12.—*Villages under Rájput Rulers in the Hills.*

I have already remarked that there are districts which did not originally show any village communities. The **Kangra** district is one: at the time of annexation (1846) it was a Rájput State. The Rája was the head of the society, and he was content with his grain-share, his cesses, and his taxes, and with the right to the waste. The circumstances of hill cultivation do not favour the aggregation of dwellings into large village sites, so that in Kangra we have small scattered hamlets, as the ground permits the formation of terraced or level fields on the hill-side.

Kangra was one of a group of States. I have already remarked on the frequency with which the old Hindu States, which were for the most part small, grouped themselves in feudal subordination to a great Rája, and this is really, on a larger scale, the Rájput tenure we find in Ajmer, where the head of the "federation," if I may so call it, has his khálsa or royal demesne, and the chief's estates are the counterpart of the smaller Ráj's subordinate to the Adhiráj. The Kangra group included Chamba, Síba, Detárpur, Guler, Suket[5], Mandi, and Kulu, which still exist. The Jamú Raj (under the Mahárája of Jamú and independent) formed another considerable group. Mr. Barnes remarks that in Kangra he "discerns the primitive form of property in Hindústán." The characteristics of this are, I have no occasion perhaps to repeat, (1) that the society recognises a chief to whom it pays a share in the grain, who takes toll and tax, who has a right to deal with the waste, subject to the practical rights of user of the landholders; (2) that the landholding right arises in the original *clearer* of the land for cultivation and his descendants, the right in *that* being all that is claimed, and it is called wárisí (as in Kangra) or wirásat, or mirás, &c. The theory is, that an ousted proprietor can return after ever so long, and though our Courts necessarily bring a law of limitation to bear on such claims, still the people recognise the right uncontentiously in many cases[6].

[5] Strange to say, this state has now a *Brahman* ruler.

[6] See Barnes' Settlement Report, § 32.

And in Kangra the right was never sold out-and-out (just as we observe in Malabar and Kanára).

The holder of each plot of land regards his holding as his own inheritance, but has neither joint responsibility for revenue with his neighbour, nor claims anything but a right of getting grazing and firewood from the waste. It was only at our settlement that, following the North-West system, the waste was distributed[7] among the villagers as their property, subject to the Government right to the trees. The villagers were then told they were jointly responsible, and thus a "bhaíáchára" community was artificially created.

It is true that in Núrpur tahsil of this district[8] and in the tract called Sháhpur Kandi (later transferred to the Gurdáspur district) there were villages of a larger kind, and claiming a right over an entire area[9]; these were due to foundation by a powerful individual and the joint succession which extended the proprietary right into a joint ownership over the whole area: this in time split up into *pattidári*, and may pass into the *bhaíáchára* form of holding.

It is curious to remark that where the tribes were pastoral, not agricultural as Gújars and "Gaddis," they took plots of land, not for agriculture, but for grazing, and subject to a toll to the Rája, which was no doubt the equivalent of the agriculturist's grain-share. They regarded the grazing grounds as their "wárisi" also[10].

§ 13.—*The Simla Hill States.*

In the Simla States and Chamba, still held by their own Rájput Rájas, the customs of landholding are just the same. Members of

[7] The hill-sides were allotted, says Mr. Barnes (with delightful naïveté), by the contiguous villages with the greatest unanimity.—Barnes' Report, § 296. See Lyall's Report, § 27.

[8] See Barnes, § 133. In these villages the *superior class* who formed the proprietary body paid the Rája's grain share, but took the taxes and tolls *within their area* from the inferiors; in some cases (as the Indaura taluqa) this developed naturally into a regular landlord-village, jointly owned by the predominant family.

[9] See Roe's Settlement Report of Sháhpur Kandi, 1873, para. 60, page 19.

[10] Barnes, § 129.

the ruling family are provided for by grants of the revenue of a village or two, and the "birt," which we found so clearly characteristic of the old form of Ráj, was everywhere known: but in these States chiefly, if not solely, in the form of grants for religious or charitable objects. "Jiwan birts," or grants of land to members of the Rája's family, are not known [1]. In these States, transfer of a wirásat holding still requires the sanction of the Rája, though this is perhaps more connected with the custom of levying a tax or fee (nazarána) on succession, than connected with a superior right in the soil residing in the Rája.

There were also none of the "zamíndárí birts" known in Oudh, nor was there any division of the Rája's rights in the lands, on the occasion of a demise.

Thus there is no opportunity for a powerful man or his family to acquire the Ráj rights in his estate, and so originate joint proprietary villages. The Ráj in these countries has always descended entirely by primogeniture, and it is theoretically indivisible. If it did split up to a certain extent, it was only into a series of smaller Ráj's, each also indivisible.

But the succession to all property, *not being the Ráj rights*, is joint, though there are traces of primogeniture, in the fact that (as in Kangra) the eldest son gets some addition to his share (jetánsi), even though it be only a cow or some article of property. Naturally, Rájput settlers, not of the royal race, might found communities, and would do so in States like Kangra, if it were not that they are fewer in number, are not rich enough to acquire large landholdings, and the families are apt to disperse and seek other means of livelihood than agriculture. The local difficulty, too, of obtaining land for cultivation compels families to separate and settle apart wherever they can find lands to clear and occupy, even if they desire to remain in their native State and live by farming.

[1] I am indebted to Major Nisbet, Superintendent of Hill States, for information regarding the Simla Hills Ráj.

The student will not fail to note from the examples afforded by the Himalayan States, as well as by Ajmer, how different an order of things results when merely a Rájput Chief with his army conquers a country and obtains the chiefship of it, to what happens when as in so many districts the Rájputs settled *as a people*.

§ 14.—*Some special tenures in the Panjáb.*

In **Multan** there are some curious tenures to be noted. Along the rivers, Ját cultivators formed communities, some apparently joint[1]. Away from the rivers, cultivation could only be undertaken by providing permanent means of irrigating the waste. The waste land was unowned, and was consequently claimed by the ruling power in later times, and we see some curious tenures arising from the occupation of land connected with the construction of canals or sinking wells.

"Away from the rivers," writes Mr. Roe, "the villages are generally merely a collection of wells which have been sunk in the neighbourhood of a canal, or in the more favourable spots in the high lands. In these there never has been any community of interest: in very many cases there is not even a common village site; each settler has obtained his grant direct from the State, has sunk his well and erected his homestead on it. Under our settlements the waste land between those wells has been recorded as a matter of course—'shámilát-deh' (common property of the village), but originally the well-owners had no claim to it whatever.

"But whilst this is the origin of many or most of the villages, there were other tracts where a particular tribe or family was undoubtedly recognised as holding a zamíndárí or proprietary right over all the lands, cultivated or uncultivated, which we call a mauza or village."

But under the rule of the Sikhs, the State did not much respect the rights of the proprietary body, and when there was culturable waste in the village, it gave direct grants to settlers just as it would in lands over which no zamíndárí claims existed. Such a new settler, however, could have been much annoyed by the proprietors, and he secured his position by paying a sort of rent—a half-seer in the maund of produce—known as haq-zamíndári; he also paid an installation fee ("jhúri" or "siropa").

[1] Tupper, Vol. II, page 25; and Roe's Settlement Report, § 66.

"Sometimes," continues Mr. Roe, "the agreement was that the zamíndár should be proprietor of half the well sunk, the sinker being proprietor of the other half, and having a permanent right of occupancy as tenant of the zamíndár's half. This custom is known as 'ádhlápi,' and it prevails chiefly in the south-west corner of the district."

Mr. Roe also mentions a custom in the south-east, where the well-sinker digs the well entirely on behalf of the zamíndárs, and becomes entitled to nothing but a portion of the gross produce, as long as the well remains in use. This is the "kasúr-sil-chah, and the recipient is called "kasúr-khwár[3]."

The person who sinks the well is called "chakdár[4]," and this class form the "adná-máliks," or inferior owners, under the zamíndárí family or "'alá máliks." It is noteworthy that in cases where the sharers in the zamíndárí right were numerous and occupied the whole land, so that no outside settlers came in, they also paid a half-seer, just like the haq-zamíndárí, only that it was called half "haq-muqaddami" and went to the headman. It was only when the body of outsiders who paid were sufficiently numerous to afford a fair income to the headman, that he would cease to collect any *haq* from members of his own tribe. In time the rent collected from the outsiders ceased to go to one headman and was divided among the whole family.

§ 15.—*Jágír and Mu'áfi Tenures.*

We have now reviewed the Panjáb village tenures and a few other customs which arise in connection with them. There still

[3] "Or kasúr-khor"—the "eater" of the "fractions"—a share in the grain-heap. The term is also applied in cases where the chakdár gives his land to tenants, leaving them to pay the revenue, and giving him only a balance or "kasúr."

[4] This term is applied either to settlers introduced by the State or by the zamíndárs themselves: it is derived from "chak"—the woodwork of the Persian wheel, by which the water is raised. There may be cases where the chakdárs were so called when no zamíndárí right other than that of the State existed. It was formerly supposed (and so stated in the first Settlement Report, and followed by Mr. Barkley in his account of the tenures) that the zamíndár could buy out the chakdár by repaying the cost of the well; and this idea was perhaps encouraged by the fact that the chakdár would employ tenants to cultivate his well lands, and this tenancy might be taken up by one of the old zamíndárs. It is now known that this view is mistaken; the chakdár is full proprietor, though subject to payment of a quit-rent.

remain to be described certain tenures which are derived from the grant of the State, other than a mere lease or sale of a plot of unoccupied waste.

In the grants here alluded to, there were already villages in possession of at least a part of the area, and the grantee obtained the right of collecting the revenue, and appropriating the whole or part of it for himself; while at the same time he could increase his profits by improving the estate and by locating tenants on untilled holdings.

In some cases the grantee was proprietor of the land to begin with, and then the grant amounted merely to a remission of the State revenue on the land.

The chief forms of such grants known in the Panjáb are the jágír and the "mu'áfi.'

The jágír was originally a grant of the revenues of a certain village or number of villages, to be taken by the grantee in support of a fixed military contingent. The jágírdár need not be owner of the lands, but he usually was of some, and had opportunities (as we observe in such grants all over India) for acquiring others. Speaking generally, this circumstance did not affect the jágírdár's position to the same extent as in other provinces; and in the Panjáb, as a rule, the jágírdár is not by any means looked on as the proprietor of all the lands in his estate by virtue of his grant. He has his own lands[5], or perhaps whole villages of his own, but that is all; nor is he owner of the waste, unless he can show a title to it like any other land.

In the Cis-Sutlej States the jágírdár, so called, was often not a grantee of any Government at all, but was simply a marauding chief of a Sikh "misl," a fighting body, not properly a clan at all, but having a sort of feudal organisation, and a scheme of sharing and succeeding

[5] When jágírs are hereditary, and not for life only (which they often are), Government has the right to fix the rule of descent (Act IV of 1872, section 8); a Civil Court cannot entertain a claim for right to a jágír unless the Government specially authorises some question to be so determined (Pension Act XXIII of 1871). But this, it will be understood, refers to the assignment of the revenue—matter of favour in which the State as grantee-is the sole judge: it does not refer to ordinary proprietary claims in the land itself.

by inheritance to property acquired. These chiefs took possession, and claimed the whole area, of large tracts of country; they called the cultivated land "sír [6]" and the waste "bír."

But as the so-called jágírdár had no actual occupation of all the land (except where he chose, or was able, to take actual possession), he left the old village body in possession, claiming for himself, as over-lord, all the rental except a chahâram or fourth share in the produce, which remained to the villages.

Under our settlement arrangements the jágírdár now receives the revenue, the original landholding communities or individuals being settled with and retaining full proprietary rights. He in fact is a mere assignee of the revenue, taking what otherwise would go to the State.

Among these "jágírdárs" there is a regular custom of sharing the income of the estate. First, there was a share for the chief, and minor shares for the "pattídárs" or "horsemen." These shares are inherited according to a special rule; no widow succeeds nor a descendant in female line, and a collateral can succeed only if the common ancestor was in possession at a fixed date (1808-9),—the date when the British Government took the petty chiefs under its protection. The greater chiefs, now called jágírdárs, were originally in fact the sovereigns of petty states which they conquered and held on the Rájput system. Sovereign powers were withdrawn in 1847, and the estates became jágírdárí, and were held on condition of loyalty and rendering of service when required, to the British Government. In most cases of these jágír grants—the support of military force being now no longer necessary—Government has imposed a "commutation tax," *i.e.*, a certain cash rate per acre, which is levied in lieu of service.

§ 16.—*Mu'áfi grants.*

By a "mu'áfi" is properly meant a remission (by royal grant) of the obligation of paying revenue on a fixed plot of land, and

[6] Melvill's Ambála Settlement Report, § 61. The jágírdár's own land is also called "lána" in the Cis-Sutlej districts.

this was made often in favour of some religious person or institution, or for some good service. According to the original meaning, the term implies that the holder of a plot of land is "excused" from paying the Government revenue; and usually it would be the person's own land that is "excused" from revenue payment, or a grant of land at disposal of the State has been made "revenue-free." But in the older days, when proprietary right was less thought of, the State no doubt granted in mu'áfi a village or plot of land which was already in the occupation of some one else. Here the mu'áfidár contented himself with leaving the original occupants in possession, but he took "batái"—a share in the produce—from them. The mu'áfi also had no condition of service attached to it. The terms "jágír" and "mu'áfi" have now come to be used very much as synonyms. This is owing to the fact that service is not now required as the condition of the grant. A "mu'áfi" is, moreover, usually a small grant; the jágír grant was commonly held by persons of some family and consideration. At the present day, however, one hears the pettiest revenue-free holdings called "jágír."

In any case when a jágír or a mu'áfi, which was for life only, lapses, then if the grantee was the mere recipient of Government revenue, he or his heir has no further claim; but this in practice is rarely the case, for the grantee may be actual owner of some of the land, and may have improved the waste, and may have also reduced the proprietors of the villages to being his tenants on some favourable terms. In this case the position to be assigned to the successors of the grantee may be difficult to decide. And when such grants lapse, special proposals are submitted to the Financial Commissioner showing with whom the estate is to be settled and at what rates.

In settling a resumed revenue assignment, the practice depends on whether we are dealing with an *entire estate*, or with revenue-free *plots* inside an estate which pays revenue. In the former case, as the estate was settled like any other, on lapse of the assignment all that happens is that the revenue is in future paid to Government. When a *plot* lapses, the assessment has to be considered and also who is to be settled with, the ex-mu'áfidár or the estate owner.

In a few places, on the border of Hindústán, State grants called istimrári-muqarrari are found[7]. They might or might not be proprietary grants. If not, they only gave a right to receive the Government revenue, of which only the fixed sum specified in the grant had to be remitted to the treasury.

§ 17.—*Taluqdárí or superior rights over proprietary villages.*

Besides these cases of revenue assignment, other circumstances may create a double tenure or interest in the land. The unsettled and precarious tenure of former Governments, and the disturbances and oppression which marked their era, constantly tended to set up one class of proprietors and throw down another. A revenue farmer might acquire a certain right, or villages may have put themselves under the management of some wealthy or powerful person for the sake of his protection. Had the course of things gone on unaltered, these persons would have in time become proprietors, obliterating the original rights; but as it is, the growth of the superior has been arrested before it had reached the stage of completely absorbing the original rights in the village below him. At the present day, therefore, there are rights on both sides which demand recognition at settlement. The class of cases in which this occurs in the Panjáb are neither numerous nor important; for want of a better term the superior right is called taluqdárí, and the right of the original holder is still called biswadárí, a term which properly implies simple proprietorship in the soil[8].

As in the North-West Provinces, the rule at settlement is, wherever possible, to acknowledge the actual proprietors and allow the superior a fixed cash allowance or málikána. The law, however,

[7] In Karnál for example. See Barkley's edition of Directions, § 133, page 51.

[8] The "biswadár" is the actual soil-holder, the "taluqdár" (or the "zamíndár") is the superior right-holder. In the Cis-Sutlej States, in the case of the Sikh jágírdárs described in the text, the practice is said to be reversed; the conquerors call themselves "biswadár" and the soil-owners "zamíndár" (using the term in its *literal* sense). This is only because the conquering chiefs chose to assume the complete right in the land, and so called *their* "right" the biswadári, deposing the real biswadárs to being mere "landholders."

gives power to the Financial Commissioner, as the chief controlling authority, to determine which party shall be settled with [9].

The cases in which questions of double tenure arise are often those in which a mu'áfi or a jágír tenure exists, and when the revenue-free right lapses, a settlement has to be made; it may be that the *quondam* grantee or his family have actual proprietary rights in the estate, besides the fact of the revenue assignment; or it may be that his right was quasi-proprietary, and it is for consideration whether he shall be admitted to engage, or the body under him.

§ 18.—*Inferior proprietors.*

The superior and inferior interests which arise from the existence of the revenue grants or some person with the "taluqdári" interest, described in the last two paragraphs, are concurrent over the entire estate. But there may be many vestiges of former proprietary rights which do not extend beyond particular plots of land now in possession of the holders. In the Panjáb, just as elsewhere, these have been provided for according to the state and degree of survival, by recognition as inferior proprietors, or as tenants with privileges of rent-rate and fixed occupancy; and, naturally enough, it is not always easy to draw the line between the two.

One of the commonest ways in which the "adná-málik" right, as it is often called in the Panjáb, arises, is in the case of persons who originally settled along with the proprietors, but who were not of the same caste or clan, and were not admitted to the full proprietary position as members of the community [10].

Descendants of the female relatives of the original founders also got into a village on similar terms.

There may be also "proprietors of their holdings" who are outsiders, but have got land by grant of Government (of abandoned or

[9] See Barkley's edition of Directions, § 128, and Revenue Act, section 34.

[10] This kind of inferior right constantly arose in cases where one or more leaders started under a grant to found a village, and required help in so doing. In some cases, indeed, as in the Dera Ismail Khán district already noticed, the whole of the settlers became equally proprietors, but in other districts the owners were adná-máliks, as in the case of the settlers in Multán.

ownerless lands), or by purchase. In some cases tenants purchase the proprietary right in their holdings.

In some parts of the Rawalpindi division, certain classes of occupants of land have been declared sub-proprietors of the land in their own possession, and settled with at fixed rates on a sort of sub-settlement. In some cases the village community can require the sub-proprietor to join the community, taking his share in the liabilities, and becoming entitled to a corresponding share in the profits[1]. In the Hazára district, the inferior proprietor, or "málik-kabza" as he is called, is found just as in the Rawalpindi division. Major Wace[2] has devoted some interesting remarks to this institution. The málik-kabza of these parts pays no rent, beyond the revenue demand and cesses due on his holding: he is not a member of the coparcenary body of village proprietors, and can claim no interest in the village common, except the user of grazing, wood, and grass, to the extent of his personal wants.

I must pass over the objections which were made to the allowing of such a tenure. In truth, it is one which accords with fact, and that is its complete vindication. Major Wace points out that it is quite consistent with native history. Such rights, so limited, were granted to faqírs and other religious persons. An old Sikh mu'áfidár often occupied the same position, since when one of the original wárisán or proprietors recovered his village on the establishment of British rule, after years of dispossession, it was only reasonable to allow some privileges to those who, during all that long term of years, had had the management of the village. It would be contrary to past prescription to require such persons to pay any rent on their holdings; at the same time it would not be consistent with facts to admit the málik-kabza to all the privileges of the actual proprietary body, who had many other rights and privileges as such, besides the receipt of rent.

[1] Jhelum 1st Settlement Report, § 267 (2).

[2] Settlement Report, 1868-74, Chap. V, 18 (p. 121). In Hazára the whole district contains 1,925 such sub-proprietors, cultivating 12,769 acres, about 3 per cent. of the total; the average holding is 6¼ acres.

In the Hissár settlement the sub-proprietors are the same as those who in Rohtak were classed as occupancy tenants; and the same may, without doubt, be found in other places. It is of course, as I remarked, not easy to draw the line between persons who are inferior proprietors and those who are occupancy tenants. As a rule, they differ practically, in the fact that the sub-proprietor's tenure is not only heritable but also transferable.

§ 19.—*Tenants.*

As already remarked, it is not easy to draw the line in cases where these subordinate rights appear, between those who should be called proprietors, even in an inferior grade, and those who are more properly called tenants, though entitled to some special privileges. And in point of fact there are cases where very similar rights may be found treated in one category or the other, according to the opinion of the Settlement Officer on the spot.

There are people who have paid no rents beyond the Government revenue, and are called sub-proprietors in one place and privileged tenants in another. And the Panjáb Tenancy Law (which does not apply to any one recorded as under-proprietor) expressly states as a ground for claiming a privileged tenancy, the very facts which I have above alluded to as constituting in some cases a sub-proprietary right.

Now, this leads me to speak of the Tenancy Law. Its history is different from that of the North-West Provinces law. Act X of 1859, with its artificial rule of a tenant-right after twelve years' possession, was never formally introduced, but still the rule has had a considerable influence on the fortune of tenants, and has caused the tenant-right battle to be waged with peculiar vehemence.

I have mentioned that the settlements were, at annexation, directed to be made on the North-West system; and the North-West "Directions" and the tabular forms prescribed for settlements were introduced. The forms, when they referred to tenants, often contained columns separately for "tenants-at-will" and for "occupancy-tenants." It was then very natural that subordinate revenue

officials, and "amíns" trained in the North-West Provinces, should, in filling up the columns headed "maurúsi" (with occupancy rights), insert the names not only of those tenants who naturally had a claim, but also those whom they found to have been in possession for twelve years or more.

In the course of the controversy to which I have alluded, this fact was brought to notice, and in some districts an enquiry was ordered, and it was found that many tenants had been recorded solely under the rule which was not in force in the Panjáb; hence a revision of the tenant lists was in some instances ordered. When this revision was complete, it was held that the entries that remained unchallenged might fairly be considered to represent a just statement of actual right.

So when the Tenancy Act was passed (Act XXVIII of 1868), although its principle evidently is to recognise only rights which are on the merits entitled to consideration, still the Legislature included, as also entitled to such recognition, those rights which had been recorded at a regular or revised settlement. But while admitting these rights on the ground of their having been recorded, the law is careful to prevent the stereotyping of errors, and the landlord is still allowed to prove against the recorded right, by establishing certain circumstances which the Act describes.

The occupancy tenants are in two classes—those under section 5 and those under section 6. The former include—

(*a*) tenants who pay no rent beyond the amount of revenue and village cesses, *and* whose ancestors paid none;

(*b*) people who, once being proprietors, lost their right (otherwise than by forfeiture), and notwithstanding continued to hold as tenants;

(*c*) representatives of those who took part in the original founding;

(*d*) a tenant who is, or has been, jágírdár of the village, or part of it, in which the land is situate, and has continuously occupied the land for twenty years.

Those under section 6 are the tenants recorded with occupancy rights at settlement.

Any one is also entitled to claim a right of occupancy on any other grounds if he can establish this in a suit.

There is a difference as regards ejectment. A tenant under section 5, and one under section 6, if of thirty years' standing (personally or through his ancestors), can only be ejected for non-satisfaction of a decree for rent. Ordinary "section-6 tenants" can be ejected on tender of compensation for right, besides compensation for improvements as provided by the Act.

Beyond these recognitions of right, no artificial tenant-right is contemplated. The Act contains only the necessary provisions as to ejectment, conditions of enhancement, compensation for tenants' improvements, and so forth, and such general provisions relating to tenants of all classes generally as are necessary. Sub-letting and alienation of holding are allowed to occupancy tenants, but to others only with consent of the landlord.

The right of tenants to plant trees or sink wells, without the consent of the owners, is a matter on which local custom will be found definite enough; the Act takes no notice of the subject and does not declare whether the tenant has or has not such a right. This matter will be determined by proof of local custom. The Act only deals with the legal effect of improvements when made.

The tenant "at will" has theoretically no right beyond his year of tenancy, but under the Act he is entitled to notice to quit, except under certain circumstances; so it is really a tenancy from year to year, not exactly at will.

The Act does not apply to Hazára, which has a Tenancy Regulation of its own, but the rights recognised by the Regulation are in principle identical with the above, and will therefore need no special notice.

As regards the local customs and names relating to tenancy, they are numerous. The terms frequently relate to the fact that the tenant was the first to clear the land (bútamár tenants, &c.), or they indicate their residence or non-residence in the village, or epitomise the nature of the contract, the share in the produce which the tenant receives, and so forth.

Section IV.—Land Tenures in the Central Provinces.

§ 1.—*Peculiar features of the Central Provinces tenures.*

In the common form of village-tenure of these Provinces, we are introduced to a feature which is not found in any other part of Upper India. The proprietary right as it now exists—the málguzári tenure—is a creation of our own system. In the North-West Provinces and the Panjáb, the idea of the middleman proprietor has found expression only in an ideal form. The village-body as a whole is the proprietor in theory, but the actual sharers are for all practical purposes in the enjoyment of proprietary rights in their holding. In Oudh a distinct proprietary right has been recognised in the taluqdár, but under him the village communities may retain their own constitution, to an extent which leaves it well-nigh perfect, and makes the taluqdár a landlord whose power is very restricted, at any rate as regards all villages that have a sub-settlement. In all these cases, the tenures, however much they may owe to our legal shaping and development, are still natural in their origin, and are based on customary features of landed interest which have arisen, become modified, and ultimately fixed, by the historical circumstances of the country, the effects of conquest, of military occupation, and of the changes and chances of Native rule.

But in the Central Provinces we come back to an almost wholly artificial tenure, which has grown out of our revenue system on the same principles that the zamíndári tenure grew in Bengal. The circumstances of the villages were such, that a strong *body* entitled to be called proprietor not appearing, there was the usual latitude for the growth of the power of the persons who managed the State revenue collections, and the ultimate recognition of those persons as proprietors.

That is an epitome of the history of the villages in all the districts, except some in the Ságar and Narbada districts; my object in this section is to explain in more detail, how this new proprietorship over the villages originated, and how it developed.

I have already explained how, as the territories that form the "Central Provinces" came up for regular settlement (on the termination or the failure of the tentative leases and settlements that had marked their earlier days), the Government orders all pointed to the "recognition of a secure right of property" as the principle which would, if applied, set everything straight. That meant that every group of lands was to have a proprietor or body of proprietors to be settled with on the North-West system.

When, as in some of the Ságar and Narbada districts, there were existing joint proprietary communities as in the North-Western Provinces, the plan was carried out without difficulty. But in most districts the villages were of the non-united type, and knew of no common property or joint responsibility. Consequently, in the case of such villages, the orders first seem to have aimed at creating the joint liability, and so *constructing village communities* on the required model. Nor did this seem anything very difficult. The villages were, or might easily be, divided into local areas with definite boundaries (for under either form the villages are localised groups of cultivators); there was the hereditary "patel" or village headman, and other officials of the village, or there was a lump assessment[3] on the whole village, engaged for by the Maráthá revenue-farmer, and by him (or by the headman) distributed among the occupants. Might not such a village be easily made into a joint proprietary body? Might not the cultivators be persuaded to agree to being declared owners of the land on condition that they would engage as a body for the assessment and be jointly responsible for it—their "patel" taking exactly the representative position of the North-West lambardár? But it was found that this could not be done. It was tried in Nimár, for instance, and failed. Under the North-Western system there was but one other course. If the land-holders were not a proprietary community with the security of joint liability to Government, there must be found some other

[3] This will be explained presently. The Maráthá assessments were sometimes in the lump, sometimes on each holding.

proprietor over them; who was the proprietor to be? I will answer the question first, and explain the reasons afterwards. The patels or village-headmen, and also the revenue-farmers of the Maráthá system, succeeded in so many instances, as give a general character to the settlement[4], in acquiring or being recognised as proprietors of the village.

In fact, their position and opportunities enabled them to grow into something really very like proprietors. In most cases they had a close connection with the estate. It is only I believe in a few villages that the recognised owner has little or no real management of the property. It is chiefly in the vicinity of large towns that the málguzár owner does not live in his village or in one of his villages, but is an absentee, drawing his rent, and perhaps not having been twice inside the village in his life. In such cases he has a "kámdár" or agent on the spot to represent him; and it is with reference to such cases also, that the appointment of a muqaddam or executive headman, contemplated by the Revenue Act of 1881, will be convenient.

Thus a proprietary right was created by "consolidating the position of the revenue-farmers, whom we found managing the villages and paying the Government revenue[5]."

§ 2.—*Early history of the villages.—Revenue-farmers.*

The primeval system of the ancient Gond kingdom was, in all probability, that typical form of the Hindu Ráj which has been described in the introductory chapter on Tenures.

As a rule, circumstances had not led to the development of village communities, except in the districts nearer to the North-West Provinces.

The villages remained of the non-united type. They consisted of local groups of cultivators, each with a hereditary right over his

[4] It is usually called the "málguzári settlement" of the Central Provinces, because our system admitted the man who engaged for the revenue—the málguzár—to be proprietor.

[5] Grant's Gazetteer, Introduction, page clxii.

own holding only, and each paying his own share of the grain as revenue to the Rája. Each village had, as we shall see, its staff of village servants and a recognised headman, whose office was generally, but not always, allowed to become hereditary. The headman's title is "patel[6]."

This system the Maráthá Government did not, as a general rule, interfere with. In countries where its power was firmly established, it fixed a separate revenue for each landholder and collected it by means of the headman. This system was followed in the neighbouring countries of Berar, Khandesh, Satára, and Poona: it was essentially "raiyatwár." But in the Maráthá districts of the Central Provinces a somewhat different system was developed: this is often called a "mauzawár" or village system, but it is by no means to be confused with the village system of the North-Western Provinces settlement, with which it has really nothing in common. The Maráthás under this system levied a *lump sum on the whole village*, and the headman (patel) made out a yearly "lagwán," a sort of "jamabandi" (as it would be elsewhere called), showing how each man in the village was to pay a share according to his holding and according to custom.

Wherever the patel was not strong enough to secure the payments with requisite punctuality, or wherever from any other cause they thought it would pay better, the Maráthás either reduced the patel to a nominal position, or at any rate gave over the village to a revenue-farmer, who engaged to pay in the whole sum assessed. A málguzár might in this way be put over several villages, just as a "patel" may be head now, of more than one village.

[6] The office of "patel," or in the Maráthi form pátíl (often incorrectly written potel or potail), is of great antiquity. Copper grants have been dug up in Ujain addressed to the cultivators and "patalika" of a village (Nimár Settlement Report, page 149; see also page 112, &c.) It is still regarded as an office of considerable dignity; great princes like Holkar and Sindia retain the title of "patel;" and in some districts of the Central Provinces where there are Rájput Chiefs or great zamíndárs, they often hold the office of patel of their own domanial villages (see also the Section on Berar Tenures, Book IV).

This system is said to mark the decadence of the Maráthá power, or to have been adopted when that power was in an uncertain position, owing to its rivalry with other powers.

The Maráthás were keen financiers, and always recognised the fact they made more by dealing (as far as possible) with the individual raiyat direct: then there was no one to intercept a portion of the revenue payment, as would be the case directly a middleman was employed. But such a plan required the Government to be strong and in a position minutely to overlook and control its own officers as well as the headmen of villages. Hence the "farming system" marks a stage of less complete control. But even then, I believe I am right in saying, the Maráthá never allowed its farmer to get hold of enormous estates, as the Mughal Deputies of Bengal did when their power was declining. The point of resemblance is, that the farmer, when once able to establish himself firmly, took the place of the ousted hereditary patel, and became the virtual head and proprietor of the village, gradually growing into his proprietary position, on the same principle (though on a smaller scale) than the great zamíndár of Bengal did. He bought in lands, took mortgages for loans advanced to pay the revenue, and located tenants on waste lands; and in justice to those who recognised (or created, if it be so) his proprietary character at the settlement, it must be remembered that in many cases (I do not say in all), by the time the regular settlement began, the revenue-farmer really had, in virtue of his opportunities, got to look like a true owner [7].

§ 3.—*The Patel.*

It was not in all cases that a revenue-farmer was employed, or if employed that he succeeded in thoroughly displacing the patel

[7] It should be remembered that by the time our settlement began, there was only one person or family in virtual proprietary position, whatever was the origin of that person. The conflict which in Maráthá days had existed between the patel and the revenue-farmer put over him had long ceased. Either the patel or the farmer, whichever it was, had become firmly settled as master of the village, and when our settlement began was in such a position that he could not be overlooked.

and reigning in his stead. But in those cases in which the old patel had survived, or had managed to dispense with the farmer's assistance altogether, he had *originally* not a bit more of a generally proprietary character over the village than the revenue-farmer had. The patel had not, in many of the districts (those of the Bhonslá Rájas), any special holding in the village. The office was even hereditary only on sufferance[8]. He was merely the representative of the cultivators and the agent of the Government in apportioning and collecting the revenue of his village.

In Nimár, however, as in the Bombay districts to the west, the patel held a "watan" or certain lands originally acquired by him in virtue of his office. The actual official duty could of course be only performed by one person; and the State would always interfere in case the immediate heir was not fit to perform the actual official duties, and would appoint some member of the family, or even some coadjutor, to do the work. But still the "watan" itself remained in the family. It included the titles[9], the official dignity and precedence (or mánpán), as well as certain dues and fees on marriages and other solemnities, and the ownership of the "garhi" or central enclosure of the village site. But its central object was the "zirá'at," or lands held in virtue of office, as a sort of remuneration or means of support (or both together), and lightly assessed[10]. Not only the patel, but all the village officials were holders of a "watan" on the same principles. The pándhya or patwári and the "mojamdár" (majmu'idár, a sort of patwári of a section of a village) had each a watan, and so had the "desh-pándya" and "desh-mukh," who were superior headmen (over the pándyas and patels respectively) in a whole pargana. Various other grades of village servants, and even hereditary artisans (alauti),

[8] His hereditary character was recognised chiefly in those parts of the Nágpur territory which had been ceded by the Nizám.

[9] Nimár Settlement Report, § 187.

[10] Chhindwára Settlement Report, § 178. The zirá'at often consisted of the best fields in the village, as the headman had great opportunities of getting what he liked into his own hands.

had also their petty watan[1]. The "patelgi" or patelship is in this district hereditary. The Government at the present day acts just as the former Government did in respect of the performance of the actual official work. It selects the heir who is most fitted; but though only one can hold the actual office, the whole family succeed together—as many as are entitled by the Hindu law of inheritance—to the watan. In this, consequently, there may be several sharers; in fact as many branches as the original stock has thrown out[2]. Often, when the shares were numerous, the younger branches got a plot of land rent-free in commutation of their share. There have been many cases where the watan has been partitioned into many shares, and this is excessively disadvantageous. In the absence, however, of any custom of primogeniture, or of one heir succeeding, it is unavoidable[3].

To make the "patel" *proprietor of the village* was therefore just as much an act of artificial creation as it was in the case of the málguzár or revenue-farmer. And this is still more the case in those districts in which the patel was not a watandár. At the same time the fact that the zirá'at lands (when those existed) constituted a nucleus of property, and that the patel had the power of settling the waste, would go security with the village banker for a villager's advance, and then would take the land in mortgage, afforded opportunities which produced just the same result in gradually building up quasi-proprietary position in the whole village as in the case of the revenue-farmer.

[1] See these described in the Nimár Settlement Report, pages 138-40.

[2] In the Berar Gazetteer Mr. Lyall notices how in Western Central India the "watan" is more prized than anything else. Speaking of the Sindkher Chief (in the south-west corner of Berar), he tells us that the family had held large jágír estates in the 16th century. In Upper India he would on this basis have developed to a great "zamíndár" or "taluqdár," but in the Dakhan he was content to be the "deshmukh" of a dozen parganas, the "patel" of fifty villages, and in his own town of Sindkher the pluralist holder of all the grants attached to menial services—washing, shaving, sweeping, &c. The family had let go its jágírs, yet had seized every sort of "watan" on which it could lay hands (page 101).

[3] See also Nimár Settlement Report, page 112, and Hushangábád Report, page 55, para. 23.

This side of the question should not be forgotten. Thus in reviewing the Nimár Settlement Report, the Chief Commissioner observes—

"Though not proprietors in the English sense of the word, they undoubtedly had an interest in the village far beyond that of mere collecting agents. If we admit the principle that a degree of independent interest in the soil is the best guarantee both for the prosperity of the land and for the facility of collection, the patel had obviously the first claim to selection as the representative of the village community[4]."

§ 4.—*Effect of settlement.*

I hope it will now be clear to the student what was the original position of the revenue-farmer and the patel, who at the settlement were recognised as proprietors of the village, under the influence of the North-Western Revenue System; and at the same time that he will see how far the selection was an arbitrary one imposed by the system, and how far there were circumstances which naturally promoted, if they did not actually necessitate it. Whether the person selected to be proprietor was originally a farmer, or the patel, was determined for each village under settlement, entirely on the facts and on the merits of the case, according to whether a patel had survived at all, or whether, if he had, he or the farmer was practically the owner. For, as I remarked in a previous note, by the time our settlement began, one or the other had long got the upper hand, and was settled in the village in such a position of superiority that there was little or no question about it. Originally, the Maráthás cared, before anything else, for their revenue; and if the patel did not satisfy them as far as revenue

[4] A striking instance of the way in which a patel's connection with the land grew is to be found in the Chánda Settlement Report. In the troublous times which followed 1804, when the Maráthá power was waning, and every district almost was a scene of struggle for the supremacy, the patels everywhere came forward and boldly protected the villages, erecting the mud or stone forts still so commonly seen in the midst of Central Provinces villages. In such times the people leaned almost wholly on the patel and submitted to him in everything concerning the affairs of the village. See also an account of the growth of the patel's power under Sir R. Jenkins' system in the Nágpur Province, and the remarks on it by the Commissioner in his review of the Chánda Settlement Report, page 10.

matters were concerned, a separate revenue lessee was put in without the least hesitation. Mr. Elliott remarks that not only had the patel no recognised claim to take the revenue lease himself, or if he had it, to get it renewed, but that the custom of so renewing it to the same person was not even sufficiently common to create a quasi-right. If there was no competition, the revenue official of the pargana had no motive for ousting the holder, whether patel or farmer, but if any one bid higher, there was nothing to restrain him from accepting the offer[5].

So it happens that sometimes a patel had retained his position, and sometimes a revenue-farmer had usurped it, and either was recognised under our system as proprietor, according to the circumstances of the case.

§ 5.—*Illustrations from Settlement Reports.*

I have noticed the following instances in the Settlement Reports which may illustrate the subject:—

In Baitul[6] the patels had mostly been displaced and málguzárs or lessees had taken their place and were recognised, except in a few cases, as proprietors.

In some districts, as Wardha[7] and Jabalpur[8], the málguzár, or "revenue engagee," is spoken of, and it seems that here it is meant that sometimes he was an outsider lessee, and sometimes the local patel holding the lease.

In Chánda again[9], and, indeed, in most of the districts which had been managed under Sir R. Jenkins' system (under which no outside lessees were admitted), the patels had retained their place and were recognised as the proprietors.

In Nimár, which is *par excellence* the country of the watandár patels, the system preceding the present settlement had been one

[5] Hoshangábád Settlement Report, page 150, para. 15.
[6] Settlement Report, §§ 98, 99.
[7] *Id.*, § 144.
[8] *Id.*, § 92.
[9] Settlement Report, §§ 32 and 277.

practically, though not in name, "raiyatwárí," dealing direct with the individual land occupant; so that here also there had been no place for usurping lessees. The orders of Government first contemplated making the cultivators or "júnadárs[10]" into proprietary communities, provided they would take the joint responsibility. But the "júnadárs" would have none of it, and so the old pàtels were made proprietors over them. In South Nimár also, the chaudhari, a sort of "assistant patel," was also recognised as proprietor[1].

In many districts it would seem that where there had been room for a possible choice between a village patel and a revenue-farmer, as one only could be selected, it was customary to grant the other a "málikána" or cash allowance or compensation; or perhaps he would be allowed a bit of land rent-free, still called his "haq" or "watan," as if in recognition of a past hereditary title.

§ 6.—*The Gáontiyás of Sambalpur.*

I cannot close this account of the growth of the málguzár tenures without alluding to the curious case of the gáontiyás of Sambalpur[2]. This district is close to the tributary states of Orissa, and the institution of a village headman or gáontiyá is the same, apparently, as in that province.

The villages here present the usual features of the old non-united village, but with the headman, or gáontiyá, grown into a

[10] I cannot trace the meaning of this word nor be sure of its true spelling; some times it is written junar-dár.

[1] Nimár Settlement Report, page 266.

[2] The Sambalpur Settlement Report is not published. There is an allusion to the district, quoting a report of Lieutenant Birch in 1857, in the replies from the Central Provinces Government to the questions of the Famine Commission. My information is derived chiefly from official correspondence in the office of the Revenue Department of the Government of India. This correspondence is interesting as showing how Western terms and the arrangements made by different powers for collecting revenue, affect our views of proprietary character. Because the Maráthás or other powers made short settlements for five years or so with the gáontiyás, and because in our language we called these settlements "leases," and the gáontiyá consequently became the "lessee," the correspondence is filled with discussions as to whether the gáontiyá is anything like a proprietary of the village, or is only "five years' lessee."

position which shows how easily the non-united village type can be overlaid by other forms.

The present settlement arrangements have virtually arrested such a complete transformation, and has secured to every landholder what is practically a raiyatwárí tenure, while the gáontiyá has only a sort of superior proprietorship which I will describe presently.

Under existing circumstances, the local area of the village is grouped into "bhogra" lands which are the "sír" or home farm of the gáontiyá, and "raiyati" lands which are held by the village cultivators.

But it will be best to describe what was the earlier custom in these villages. In many of them the gáontiyá is the founder of the village (of course the *present* gáontiyá is probably only a descendant or representative of the man who first cleared the village for cultivation[3]; but it will simplify matters if I speak of the ancestor himself). He obtained a grant from the Rája and set about clearing a site for residence and land for fields. Sambalpur is noted for its tanks and its mango groves. These are usually due to the gáontiyás. When the headman or founder began the work he established a great tank and planted a grove. As his natural reward, he took the land nearest the tank as his own (this was the foundation of his sír or bhogra holding, as it is locally called).

All the people who came with him to the work,—for it is obvious a single hand cannot found a village,—out of deference to natural superiority, or out of necessity for some sort of tacit understanding as to subordination of the led to the leader, regarded him as in a superior position[4].

[3] I do not mean that in *all cases* the present gáontiyá founded the village, either himself or in the person of his ancestor. A man may have come to the headship subsequently by the Rajá's appointment or otherwise, and thenceforward maintained himself in the position.

[4] And this no doubt gave rise to the custom that if the raiyat is wealthy enough to make a tank in his land, he gets the gáontiyá to turn the first sod, which is a token that the tank does not give him such a claim, that if he relinquishes the holding he can reclaim it afterwards, or prevent the gáontiyá dealing with the relinquished land.

But each "raiyat" or cultivator, none the less, regarded himself as permanently entitled to the land he cleared, subject to the payment of the Rája's share. Should he leave the village, he lost his land.

A new-comer taking up land with the gáontiyá's permission got just the same position as any older settler.

It is remarkable that in these villages the custom of redistributing land was in force, and still remains so. It is not merely that certain holdings, or plots, are made to change hands periodically; but in order to secure an equality, the whole of the land is classified, and each cultivator gets a little soil of each kind from the best to the worst, and these little lots, making up a holding, are periodically redistributed[5]. Supposing a raiyat is entitled to a twelfth of the land, he gets his twelfth, not in one plot, but in twelve pieces consisting each of one-twelfth of each particular class of soil into which custom has divided the area.

Under the British settlement the gáontiyá is declared proprietor, but his proprietorship is limited. In the first place he is absolute owner of his own bhogra land, and is responsible for the revenue on the entire village.

In order to remunerate him for this responsibility, he is allowed to have so much of his bhogra land revenue-free as equals a fourth of the entire assessment; for the rest he pays revenue.

But his bhogra is his absolute property, and any tenants he employs to cultivate it are merely tenants-at-will.

He is also allowed to locate new cultivators on the waste (which is allotted as elsewhere to the village area) or on lands which may be relinquished; he is allowed to charge rent on these, which rent

[5] The same practice continues in other districts of the Chhatisgarh Division (see Raipur Settlement Report, sections 170-72).

As long as the landholders are recognised (as in Sambalpur) as practically proprietors of their holdings, the practice, though highly inconvenient, gives rise to no legal question. But in the other districts where it survives, the málgúzári tenure is in full force and the "raiyats" are now tenants or perhaps malik-maqbuzes. Here, then, a question arises—could those tenants who shifted their holdings acquire an occupancy right under Act X? The matter will be provided for in the new Tenancy Law, but at present there is no legal solution for the question.

must not exceed the revenue-rate paid by other raiyats. In other words, these new-comers are assessed to revenue like the rest, only the revenue payment goes to the gáontiyá proprietor as his rent, not to the treasury.

The raiyats are not, at present, allowed to alienate their holdings. The state of the country is not such as to require this power, and if alienation were allowed, the gáontiyás would immediately take the land, buying it really for nothing, but nominally in payment of some old and forgotten debts[6].

In the Biláspur district, which is in this neighbourhood, the gáontiyás were apparently made málguzárí proprietors of their village, leaving the raiyats to secure their "occupancy rights" under the Tenant Law[7].

§ 7.—*Tenures from grant of the Sovereign Power.*

Such are the ordinary proprietary tenures in villages as determined by our settlements. Next I have to speak of the special proprietary titles arising from royal (service and other) grants.

In some parts of the country, especially in the hill tracts, are chiefs of Gond or Rájput origin, who are recognised as owners of their estates; and these are now spoken of as *zamíndárí estates*, almost in the Bengal sense. These are in fact either minor and subordinate chiefs' estates, surviving from the old days, or are estates derived, as I have previously described, from the division of some greater Ráj; or they are estates acquired by some grantee or local magnate who has risen to a position superior to that of the ordinary land-holder.

There are also here, as elsewhere, a few "jágír" estates granted originally on condition of military service. Other grants called taluqdárí (or locally tahatdárí) are sometimes found.

[6] The gáontiyás themselves were very anxious that the villagers should not have the right of transfer, partly, no doubt, from the fear of losing dignity,—since the new-comer might not be as subservient to them as the former one; partly also from the long-descended desire to keep cultivators lest the land should go out of cultivation and thus the revenue for which they are responsible be endangered.

[7] See Bilaspur Settlement Report, section 317.

There are also State grants called "mukta" or ubárí, which gave the estates at a fixed quit-rent or assessment.

Lastly, there are revenue-free grantees, also recognised as proprietors, called "mu'áfidárs" or "mukásádárs[8]," or sometimes "inámdárs."

It did not follow that all these were originally, or in their nature, grants of the proprietary title; but the grantees readily acquired the superior right. Some of these grants were made where there was waste to be cleared, or old cultivation to be resuscitated, so that their proprietary character is not far to seek.

I will now proceed to offer some remarks illustrative of these tenures as they appear in different districts.

§ 8.—*Zamíndárís.*

The zamíndárí is a large and often semi-independent tenure formed in certain districts[9]; it is always held by one proprietor[10]. The owner has the right to all waste and forest in his grant, but is required (or may be required) to observe Government rules in respect of its management[1]. In Chánda the zamíndárí is indivisible and untransferable save to the nearest male heir, and is tenable during loyalty and good conduct. It descends by primogeniture, and members of the family get only a maintenance. The lord also gets the Abkárí (excise duty) and Pándri (or house tax) in his estates[2].

In some estates the zamíndár or chief appoints a patwárí and a representative patel for each village.

In the Biláspúr district these zamíndárís may also be found, and the Settlement Report[3] notices the dislike of the families to division or separation of shares.

[8] This is a term used in the Nágpur province; districts of Nágpur, Chánda, &c.

[9] As Raipur, Bálághát, Chánda, &c.

[10] In the Ahiri zamíndárí (Chánda district) there are two "sub-zamíndárs" created by the present owner. In Chánda the quit-rent is called takoli (Chánda Settlement Report, section 359).

[1] See Settlement Report, section 324, where the rules are given in detail.

[2] Raipur Settlement Report, section 246.

[3] Settlement Report, section 311.

§ 9.—*Jágirs.*

The jágír tenure, which is practically only another name for zamíndárí, exists chiefly in Chhindwára [4]. I find no mention of it (except incidentally and apparently as synonymous with taluqdár) in the other reports.

The jágír was originally a grant of the revenue of a village or group of villages, either on condition of furnishing a military force or of service by keeping open the passes on the hill routes. But now such a title does not differ from the zamíndárí. Originally also it was a life grant only, but became hereditary in many cases, because of a feeling that it was beneath the dignity of the Government to resume it. The succession to the jágír, as to the zamíndárí, goes to the eldest son, who is called "gaddi-ká-málik." Younger brothers get a maintenance allowance, or probably a rent-free grant of land in lieu thereof.

§ 10.—*Taluqdárís.*

Of lesser rank, but somewhat similar, was the taluqdár. The dignity varied with the size of the estate. The whole estate was assessed with a fixed quit-rent [5]. Sometimes the taluqdár collected the whole revenue and paid it into the treasury, getting back a fixed allowance.

Many taluqs were granted like jágírs for service, but on a favourable quit-rent assessment. If the taluqdár was allowed to collect the revenue himself, paying his fixed quota into the treasury, he naturally got a more prominent position, and proprietor-like hold over the villages, than where the Government settled with the villages, and merely paid him his allowance [6]. In most cases, however, the taluqdár granted leases, disposed of the waste, and acted as landlord [7]. Wherever the taluqdárs have maintained

[4] Chhindwara Settlement Report, Chapter XI, section 499, &c.

[5] Jabalpur Settlement Report, section 98.

[6] See Narsinghpur Settlement Report, Chapter IX, section 158, &c.

[7] See the account of the Hushangábád taluqa estates, page 156, sections 22-35. In Upper Godávari (Sironcha sub-division of Chánda) a sort of taluqdár called "sirdesh-mukh" is found; the sub-proprietors under him are called "dorwa" (Settlement Report).

the superior position, they have been recognised at our settlements; but there has been some variety in treatment, and chiefly in respect to the recognition of sub-proprietary rights and the admission of the landholders to settlement or to sub-settlement. The following conditions now appear:—

(1) Small taluqa estates, when the holder is settled with as the proprietor, and, except perhaps that his assessment leaves a somewhat larger margin of profit than to an ordinary málguzár, there is little else but the complimentary title [8] to distinguish his tenure.

(2) Larger estates where the taluqdár is recognised as the superior proprietor, but where there are persons on [9] the estate whose claims to recognition resulted in their being recorded as sub-proprietors admitted to a sub-settlement.

(3) Cases where the position of the taluqdár had originally been of the inferior grade, or by lapse of time and circumstances had become so weakened, that the landholders were settled with direct, as proprietors. In such cases, the settlement-holders pay the whole revenue into the treasury, a fixed stipend or "málikána" being paid from the treasury to the nominal taluqdár.

The Maráthás had a form of taluqdári tenure called tahatdári, and this is found chiefly in the Chhatísgarh districts. The term especially applies to a grant where there was perhaps a small settlement in the midst of a large uncleared tract: the grantee had to locate cultivators, make advances, and exert himself to bring as much of the grant under cultivation as possible; he paid a quit-assessment only; his grant was for a term of years only, and it might be renewed [10], but was by no means always so [1]. In some cases

[8] See Mandla Settlement Report, § 201.

[9] See these classes described in the section on subordinate tenures further on.

[10] See Biláspur Settlement Report, § 313. There a contrast is drawn between the tahutdár and taluqdár; the chief difference was that one had a grant of lands uncleared or nearly so, and the latter of villages already cultivated. Of course when the grantee had spent money on the estate, his claim was stronger; but in principle the Settlement Officers dealt with both classes in the same way.

[1] Ráipur Settlement Report, § 242.

therefore, the grantee's position as proprietor would be very strong. This is, however, not always the case. In four "tahat" parganas of Ráipur it appeared that sub-leases had been granted, and that the expense of improvement had fallen on the sub-lessees. Then the tahatdár was treated just as before described; he was allowed the superior right over some villages, but none at all over others; but received a cash málikána [2].

§ 11.—*Ubárí grants.*

Of the other titles derived from grants by the ruling power, the most prominent is the "ubárí" of the Ságar and Narbada districts, closely analogous to that called in the Nágpur province "mukta." It is comparatively rare. It was a grant of an estate for life, to be held at a quit-rent—usually one-half the ordinary revenue. An immense deal of correspondence has taken place about these tenures, and it was proposed to make no enquiries about the rights of sub-proprietors in them; but this was not in the end maintained [3].

It was found in this tenure (as in any others where there was a superior owner) that the "ubárídár" might have lived away from the estate and merely drawn the cash-rent as a sort of pension from it; or he might have some connection with it, directly granting leases to middlemen and making his own conditions; or he might have closely managed the whole estate, improved it, and spent money on it. It was finally decided that all rights might be examined, and subordinate rights recorded where it was equitable to do so.

The larger "ubárí" estates were, in the matter of rights to the adjoining waste, treated like zamíndárís and were allowed "manorial perquisites" (whatever that may include) in forests and wastes belonging to the estate [4]. Excess waste was not cut off from the

[2] See the enquiry described in Settlement Report, §§ 244-45.

[3] The Settlement Code contains numerous papers on the subject. See especially Circular B., facing the 2nd Appendix, § 22.

[4] See page 8 of the abstract to the Settlement Code, clause 4.

zamíndárí, taluqdárí, or larger ubárí estates as it was in ordinary villages. But the smaller ubárí tenures were treated in this respect as ordinary villages or málguzárí estates.

§ 12.—*Other grants.*

Besides these, there are the revenue-free grants which sometimes cover a whole village, and sometimes are merely small "ináms," or grants of plots of revenue-free land made on charitable, religious, or petty service considerations. These are the "mu'áfídárs'," or as they are called in some parts "mukásadárs'," holdings.

There was a good deal of correspondence about them. They always involved the proprietary right[5]. They were all to be investigated, and their validity determined, before the settlements closed. A number of them of course were found to be invalid or had lapsed, and it had to be determined what should be maintained, and for what period; whether in perpetuity, for life, or for the term of settlement. It is not necessary here to go into detail on this subject, as all such cases have now been settled[6].

A curious tenure of the Maráthás is noticeable in the Chánda Report, and called "takam." It was a grant made to a person who would dig or embank a tank, and was of as much land (waste) as the tank would water; the rate paid for the grant was small, and called "mundsara," but (in theory) it was enhanceable.

A fine or fee was usually paid for the grant, and so with mukta grants[7].

§ 13.—*Inferior proprietary rights: sub-proprietors.*

The reader will readily understand how in the Central Provinces the determination of the variously originating proprietary claims necessarily gave rise to numerous cases of double tenure—an upper and an under proprietary right.

[5] See Chánda Settlement Report, § 276.

[6] When lands were granted in Chánda on a "mukása," tenure, if it was a whole village, it was called mukása, if a part it was called "vritti," which is the Sanskrit form of "birt," a term we are already familiar with. (Settlement Report, § 360.)

[7] Settlement Report, § 363. Perhaps the word should be "takam."

In all zamíndárí and taluqdárí estates this is matter of course; but in the villages in which the málguzárí tenure was recognised or conferred, there were also many questions as to the position of the village landholder under the málguzár. In some cases there might be room for doubt as to who should be recognised as the superior. In the Central Provinces therefore, perhaps, more than anywhere else, the settlement system necessitated an extensive enquiry into, and record of, secondary rights[8]. This was attended to with the usual difficulty of classifying or defining such rights.

I have already given an indication in my general review of Indian settlements, that there are two different forms in which a double rank of ownership right appears.

In one of these the superior proprietor receives rent for the whole estate, but under him the entire village is regarded as "inferior proprietor." Thus in a zamíndárí or jágír estate there may be whole villages under the chief, with their original headman or patel, and their cultivators, who perhaps had been there from the day the ground was cleared.

The same thing might occur in the málguzárí tenure, the now recognised proprietor having indeed a superior position, but not such as to have obliterated the village rights, which now appear as sub

[8] See specially clauses 12-17 of the Ságar Rules (Government No. 173A., dated 30th November 1853). The Settlement Officers were "to recognise fixed rights or claims and interests in whatever form they may have already grown up, and to avoid any interference with them by any speculative acts or views of the officers of Government." This was probably said with special reference to the maintenance of the proprietary communities where they survived, which would give a kind of tenure not uniform with cases where a sole proprietor was found. The officers were to take rights as they found them, and not be too desirous of moulding them all on one model. These orders can scarcely now be read without a smile, when we reflect that notwithstanding the largest allowance for cases where (as above explained) the patel or málguzár had in fact acquired what we could not help calling a proprietary position, still there were many places (*e.g.*, Nimár) where the recognition of such a position was an act of almost pure creation. And the creation was, *pace* the orders, solely the result of "speculative views,"—of a system which laid down that in no case would Government deal direct with the individual occupants of land. Had a purely natural plan been followed, of recognising rights *as they were*, there must have been many cases where the settlement would have been raiyatwárí; and it is little wonder that many advocated such a system for the province generally.

or inferior proprietary rights in the village. In these cases there is, as already noted, always a sub-settlement made with the inferior proprietor.

§ 14.—*The Málik-maqbúza.*

But in other cases there may be no general inferior proprietary interest over the estate, but an individual here and there may have preserved sufficient vestiges of his ancient rights to make him entitled to consideration, and this is given in practice by calling him "proprietor of his holding" or "málik-maqbúza." Such an individual is not an "inferior proprietor," in the sense in which that term is used in the Revenue Act of 1881, and his right to a sub-settlement is not absolute, but is optional with the Settlement Officer, according as he sees some advantage in granting it.

Such persons are commonly represented in villages by the old hereditary occupant, the "júnadár," or kadím-kásht kár, or whatever else he may locally have been called; or by an ousted or former málguzár, patel, &c., or by a descendant of such person who is still in possession of some lands.

§ 15.—*Difficulty of distinguishing inferior proprietary from tenant-right.*

So far this seems simple and intelligible; but then there comes the usual difficulty of drawing a line between tenures or interests in the land which are in such a condition of actual survival that they can be assigned an "inferior proprietary" position, giving a quasi-proprietary right in individual plots of land, and those interests which have now faded out, or appear so vaguely and with so much uncertainty, that it is difficult to say what they *now are*, though it is easy to speculate as to what they *once were*.

Usually the plan was to give practical recognition to them by declaring an occupancy tenant-right; but it is not to be wondered at that the line of distinction between the class which obtained an inferior proprietary right and that which only acquired a tenant or occupancy-right, should not be very uniformly drawn.

As these questions were actually determined at settlement, and the rights of such people have been recorded one way or the other, it is now of no practical importance to go into the detailed orders which guided, or were intended to guide, the enquiry; it is enough the principle adopted should be understood.

Where such rights were very strong, they would, indeed, be recorded as actually proprietary, though in the second grade; for the Government had in its settlement instructions of 1853 clearly ordered that such cases of strong *natural* right should be provided for by making the person entitled thereto a proprietor of his holding or "málik-maqbúza." The gist of the orders was, that where the old revenue-farmer or patel had been recognised as *owner*, and it was felt that this was (or might be) rather an artificial creation of ownership[9], then all such landholders as had real claims to consideration should be recorded as proprietors of their holdings, though in the second grade; their rights were to be transferable, and they should be entitled to share in the waste, and, indeed, to have the rights of a proprietor, subject to the payment of a certain rent to the superior.

These orders seem to have been very generally understood and acted upon, as regards *some* classes of occupants; but there were others to whom the same orders might have been applied, but who somehow or other were put down as tenants, although they were clearly entitled to protection by reason of their having got their lands by inheritance, or had cultivated them before the person newly recognised as owner gained his connection with the village. Meanwhile Act X had been extended to the provinces[10]. Some of the persons in question were treated as "málik-maqbúza" under the original orders, while others were only recorded as "occupancy tenants" under the Act.

[9] See No. II in the Settlement Code, section 17; the exact phrase (which implies what I have above stated) is: "where the proprietary right and the title to engage with Government are conferred on a party who, having . . . . a fixed claim or usage of management and collection in a village, has yet held connection rather from a *hereditary tenure of service than from any exclusive right of ownership*," &c.

[10] It is still in force and will remain so until the Tenancy Law passes. The Tenancy Law will, however, practically secure all rights declared at settlement.

§ 16.—*Principles on which rights were declared.*

It must be remembered that the Rent and Tenancy Act (X of 1859) was extended to the Central Provinces. This Act, as we already know, does not make any reference to the facts or circumstances of a tenancy as affording the ground for protecting the tenant by giving an occupancy-right: it simply says that every tenant who has held for twelve years cannot be ejected, except on certain conditions proved in Court, and that he can only have his rent enhanced in a similar way. Any tenant, therefore, put on the register as a "legal occupancy-right tenant" would have nothing recorded of him, beyond the fact of twelve years' occupancy, any special history or feature of his holding being, legally speaking, surplusage. Should, then, the Act be repealed or modified (as was then expected), such tenants would lose their protection against ejection and enhancement.

But many such tenants would in reality be able to rest their claims on much stronger grounds than a mere twelve years' possession, and such cases consequently deserved recognition in a way which would not be dependent on the chances of Act X being maintained or repealed. Accordingly, in 1863, the Settlement Commissioner by circular called attention to this difficulty, and wished to draw attention to the real difference between a person entitled to be called "proprietor of his holding" and one who would be merely an occupancy tenant, dependent solely on the Act.

The following classes of claimants had, I gather from the Reports, been pretty uniformly recognised as "málik-maqbúza," as intended by the original orders :—

Village headmen and others who had founded villages, cleared waste, &c., but had now sunk into an inferior position.

Thekadars or lessees of villages created by the superior, whose connection with the estate was so close and permanent as to demand recognition [1].

[1] The position of lessees might vary from that of a mere contractor who had undertaken to realise the proprietor's rents to that of one who had advanced money, improved the estate, and closely managed its affairs. See Settlement Code, No. LXXIX.

Cadets of families who had been assigned separate lands for maintenance[2].

Cadets and members of málguzár's family divided off and holding land rent-free or at quit-rent in lieu of a general share[3].

Former málguzárs, &c., who had been ousted, but had retained the lands of their old "watan" or some "haq" in recognition of their former character.

Holders of resumed revenue-free grants.

But, then, besides these, it was the intention of the settlement orders to acknowledge also as málik-maqbúza, cultivators of long standing who were to be protected, "on the ground of their continued occupancy;" these were, in fact, cultivators who had held the power of transferring their holdings, who had spent more than ordinary capital on the land, and who had perhaps held long before the present owner came into connection with the village. But this class had not always been attended to, it would seem, and some of such old cultivators had simply been put down as "occupancy tenants." The circular of 1863, above alluded to, was designed to rectify this. The Government of India was referred to, and the result was that the order well known as "Circular G (1865)"[4] was issued; this solved the difficulty by ruling that tenants in six classes should be protected specially by being called "unconditional[5]," *i.e.*, not liable to be ejected, *even if Act X were repealed* or modified. The protection was to be effected by entering clauses in every "wájib-ul-'arz" (or paper notifying the customs of the village and its administration) agreeing on the part of the proprietors to the absolute right of such tenants. The clauses declared the rents fixed for term of settlement, the tenure heritable and transferable (subject to paying a "relief" of one year's rent to the superior or owner).

[2] See Narsinghpur Settlement Report. In some estates there was a strong repugnance to recording the lands as divided, or the members of the family as separate sub-proprietors; this from motives of maintaining the family dignity. See Hoshangábád Settlement Report, page 163, section 39.

[3] Hoshangábád Settlement Report, page 168, section 52.

[4] Printed in Settlement Code (Supplement), and also in Nicholls' Digest, Vol. II, page 430.

[5] Also spoken of as "Circular G tenants," and "*mutlaq*" or absolute, also "*mustaqill maurúsi*" or unconditionally, fixed hereditary tenants.

The six classes may be summarised as follows :—

(1) Occupants whose tenancy was hereditary *ex origine*.
(2) Who had expended an unusual amount of capital on their lands.
(3) Who were relations of the present or former proprietors, and whose tenure may be considered as to some extent a *substitute* for a share in the proprietary right of the family.
(4) Tenants of new villages who had held ever since foundation or reclamation from jungle.
(5) Tenants who were holding before the present owner acquired his position.
(6) Tenants whose holdings had descended by inheritance, provided they had held for twenty years at least.

Practically, therefore, these persons were in as good a position as that of the "málik-maqbúza" originally intended for them.

All others who had claims based merely on possession for a term of years were to be occupancy tenants under Act X.

The results were very various in the different districts.

Mr. Elliott states that in Hoshangábád, while he recognised many of the classes which I have referred to as allowed on all hands to be sub-proprietors, no rights of the "Circular G" class were either claimed or allowed[6].

In Wárdha nearly 15,000[7] persons were admitted as proprietors of holdings, on the ground of their being representatives (calling themselves "muqaddam") of old "proprietary" families[8].

§ 17.—*Controversy about the tenant-right.*

The circular of 1863, however, placed one restriction on the recognition of the rights which it called attention to. It proposed that the persons who were entitled to consideration on grounds independent of mere length of possession, should themselves take the burden of proving the circumstances that warranted their claim.

[6] Hoshangábád Settlement Report, page 169, § 53.

[7] There is a misprint in the Report of 149,202, probably for 14,902.

[8] Settlement Report, § 203. For the way in which sub-proprietary claims were dealt with in other districts, see Settlement Reports of Nágpur, §§ 19-21 ; Chánda, § 269 ; Bhandára, § 203.

To this restriction Mr. Campbell, then Chief Commissioner (in 1868), took exception. He urged that the original orders of settlement of 1853, directing the careful record of all subordinate rights, laid no such burden of proof on the claimant. The right to the general ownership or superior title in the village was "conferred" on certain persons, and therefore it was not right to put the original occupants to any proof; rather they were to be recognised as matter of course, and if the newly created superior did not like it, *he* was to show that there was *no* ground for so recognising them. Mr. Campbell contended that as the Central Provinces lay midway between the North-Western Provinces and Bombay, so the settlement was meant to be midway between the absolute proprietary settlement of the North and the raiyatwárí settlement of Bombay. This, it must be confessed, is rather a neat and taking phrase than one which accurately expresses the facts. The North-West Government had no idea of modifying their system, but they knew that in many cases the making of a patel or málguzár into a proprietor would be an artificial proceeding, and so they felt it necessary to be sure that existing natural rights were not overridden in the process; but that involved no modification of the system, and was certainly a well-recognised part of the Regulation VII procedure.

Mr. Campbell's main position was that the *málguzár* was intended to prove his strong title, not the ryot to prove *his*; but surely, though this is true, it does not follow that it was right to accept all raiyats as sub-proprietors where the málguzár's title was weak or artificial, and ignore it where it was otherwise. The málguzár's title may have been very strong: still if the *raiyat* claimed that he had been antecedent to him, that he had spent capital in excess of what a mere tenant would be likely to do, though it would be only fair to recognise the tenant's claim, it would be equally fair to require *him* to prove it.

At the time, however, notwithstanding the existence of the Circular G, and that the circular of 1863 had been in force for several years, the latter was cancelled. Then there was a long cor-

respondence; the Settlement Commissioner justified his circular in an able note, the opinions of other experienced officers were called for, and the final orders of the Government of India, though they did not restore the circular of 1863, thought that the case was sufficiently met by recording rights (other than those already admitted as "málik-maqbúza") under Circular G. So that practically the result has been to provide for all subordinate rights :—

(1) By declaring the person to be a "málik-maqbúza" (usually rendered "proprietor of his holding" (*i.e.*, not a mere privileged tenant). His right is heritable and transferable.

(2) By declaring an "unconditional tenancy right" protected by clauses in the wajib-ul-'arz, under Circular G, which gives almost the same rights as the first, only that it does not carry a share in the profits of waste, and makes the right of transfer subject to a relief or cash payment (see page 88).

(3) By recording an ordinary tenant-right of occupancy under Act X of 1859.

§ 18.—*The new Tenancy Bill.*

The new Tenant Law for the Central Provinces, which still remains in the form of a Bill in Council, will provide for the tenant-rights which have thus arisen.

It recognises the "absolutely occupancy tenants" of the settlement, and it maintains generally the twelve years' rule, so that the ordinary occupancy tenants of the settlement will not be affected, though Act X will be itself repealed.

The twelve years' rule is to be subject to the usual exceptions. Occupancy rights cannot grow up in land which is held on a lease providing that the tenant shall quit the land on the expiry of a given term, or agreeing that occupancy rights shall not be claimed. The right does not grow up on a proprietor's sír land.

It is also provided that tenant-rights may grow up on land which is exchanged; that is, a practical holding of a given area, although village custom prescribes that holding may be now here, now there, as to its actual locality, shall give the occupancy right.

To suit the peculiar circumstances of the tenants in Chánda and Nimár, who really appear to be the old land cultivators, long over-

ridden by incoming families who have grown to be the proprietors, *all* tenants will have occupancy rights, except those cultivating sír land of the proprietors, and holding lands which were recorded as waste at settlement, and are held under special settlement terms. For here it is obvious the tenants were evidently located by the proprietors to till the waste, and they have not the same equitable and ancient claim which they have on the old cultivation. There are also special rules about the rent of such lands.

In Sambalpur the right of the tenants, already alluded to, is protected by the fact that there is no power of ejectment, except one consequent on an order of Court passed when a decree for arrears of rent has remained unsatisfied for fifteen days. The rent is also to be that fixed at settlement; and agreements to pay more are void, except under an order consequent on some expenditure of the landlord which has improved the productive power of the land.

In Sambalpur (as also in Chánda and Nimár) the occupancy right is fully heritable like any other property. In other districts, it only descends in the direct line, not to collaterals, unless they were co-sharers in the cultivation.

The occupancy tenant-right is made transferable without the landlord's consent, but only to a person who by inheritance has become a co-sharer in the holding.

In Chánda and Nimár, and in the case of all "absolute" occupancy tenants, the right is transferable to any one who could succeed as an heir on the death of the tenant.

I mentioned these features first, to show how the rights determined at the settlements will be recognised and provided for by the new law.

But the whole law contains several novelties; and both in arrangement and detail it represents a great advance on the older rent laws of the other provinces. I have mentioned no sections by number, because in the process of final revision, even if no serious alteration is made, the numbers of sections are sure to be changed, and to give those of the Bill would only introduce confusion. It will be a profitable exercise to the student, when the Act

passes, to compare this account with the provisions that ultimately become law, and to note the points of difference.

§ 19.—*Arrangement of the Bill.*

It may be convenient here to give a summary of the contents of the Bill.

After a series of necessary definitions, occupying the first chapter, the Bill treats (in Chapter II) of the relations between landlord and tenant generally. It lays down certain general rules as to the presumption which arises in regard to the amount of a tenant's rent in any rent suit, and fixes the beginning of the next agricultural year (1st June) as the date from which all changes shall commence, unless otherwise ordered in special cases.

The Chief Commissioner is to fix dates for payment of rent by instalments, where no contract has been made. Provision is made for a tenant to deposit in Court the rent he thinks he ought to pay: penalties are provided for exactions by the landlord, and for refusal to grant receipts for rent. It is also provided that if Government remits or suspends payment of revenue owing to drought or famine, &c., the landlord may also be required, in bringing a suit for rent due, to abate a portion of the rent, on the tenant's proving that the land is that on which the damage or loss, which led to the revenue remission or suspension, occurred. It is provided that no rent whatever, whether contracted for or not, is to be less than the Government revenue.

The next division of the chapter treats of the procedure for rent payment by estimation or division of crop; and the next, of the landlord's lien on the crops for his rent. Distraint is not allowed, but a prior claim for one year's rent is given over all other claims and all other attachments of the crops. And to give the full benefit of this, a period called the "landlord's fortnight" is fixed, and runs for fourteen days from the date of any rent-instalment falling due. So that if any person attaches the crop, say, for a debt, during this period, he cannot proceed to sale till it has elapsed, and the

landlord has an opportunity of exercising his prior right to satisfaction from the crops [9].

The next division deals with the surrender and abandonment of holdings by tenants; and the next with ejectment generally. Provision is made for the tenant's interest in crops unreaped, and land prepared by his labour for sowing, at date of ejectment. Then follows a further division on improvements and compensation for them. All agreements by the tenant not to make improvements, or to be ejected if he makes them, and all entries in the former records of rights having the same effect against the provisions of the Act, are declared void.

The next division of this chapter deals with cases where several persons are joint landlords. The chief provision is to prevent the tenant being harassed by having to pay fractions of rent to two or more persons.

The last division deals with miscellaneous matters, such as the power of requiring written leases showing the terms of holding, the measurement of holdings, and the awarding of leases when the Government assessment is changed.

These general rules being disposed of, the third chapter deals with the special features of holdings by tenants-at-will, which it calls "ordinary" tenancies. The chief of these relate to notice of ejectment and to certain remedies against ejectment which are available, and to rent, which may be fixed by the Revenue Court in certain cases only; otherwise this is not a matter for interference. Chapter IV describes tenants for a fixed term, and Chapter V deals with tenants with a right of occupancy. Most of the provisions of this chapter have already been noticed.

The last chapter (VI) is occupied with jurisdiction and procedure. As usual, a number of subjects are made over to Revenue Courts, and the Civil Court's jurisdiction is excluded.

[9] If the produce is liable to speedy decay it may be sold at once, but the proceeds are deposited for the same purpose.

CHAPTER III.

LAND REVENUE BUSINESS AND OFFICIALS.

Section I.—The Revenue Officials and their Duties.

§ 1.—*Subjects of Revenue Administration.*

It will be readily understood that, apart from all other branches of duty,—registration of deeds, stamps, excise, &c.,—the land-revenue affords the District Officers a large, if not the largest, part of their official occupation. In enumerating the branches of work that are included under the general head of "Revenue-business," I might begin with the charge of the district treasury, for the treasury is the place of deposit for all revenue payments. The village collections are, as a rule, in the first instance, paid into the tahsil treasury, the latter transferring its receipts to that of the district. But treasury work is so specially connected with the rules of public account-keeping, that it forms a practically separate branch, and will not be further alluded to in this Manual.

The remaining branches of duty may, however, be summarised as follows. First, the Revenue-officers have to supervise the collection of the revenue, and watch the effects of the assessment, using their power to compel payment when it is necessary, but discriminating carefully where real misfortune necessitates a suspension or even remission of demand. Next, they have to supervise the working of the local revenue machinery, especially the patwáris or village accountants and the headmen; and in connection with these offices, claims are constantly coming up for hearing regarding appointment, dismissal, or on the occasion of a succession. Then there is the maintenance of the record of rights. Proprietors die and are succeeded by their heirs, or they sell and

mortgage their holdings; these changes have to be registered, so as to keep the record of rights up to date. Applications have to be heard for the partition of joint estates. Lands affected by alluvion or diluvion have to be settled. In some districts where revenue-free holdings abound, much work has to be done when such estates lapse, in determining at what sum they should be assessed and with whom they should be settled. In some cases boundary marks may be obliterated and disputes arise, or orders are required for the restoration of the marks. When land is taken up for public purposes under the Land Acquisition Act, the Collector has the duty of managing the business, which, besides the award of compensation, may involve the reduction of the revenue-roll[1]. These are some of the chief heads of duty, apart from the more formally judicial work which as "Revenue Courts," hearing rent suits, and other applications connected with tenants, the officers may have to perform, and which vary in different provinces according to the laws in force.

It will therefore be necessary, in order to render our study of the system complete, to consider, not in detail, but in outline, what the grades of the Revenue-officers are, what their duties are, and how the business of their offices is done.

§ 2.—*May be contentious matters.*

It follows naturally from the nature of the business to be done (as above indicated) that many questions cannot be disposed of without hearing both sides. One party may apply to have some record made, some succession recognised, and so forth, and some one may have an objection or a counter-claim on his side; a reference to documents and a hearing of witnesses may be necessary, so that

[1] The Act itself has nothing to do either with the system under which land-revenue administration is carried on, or with land tenures; consequently I have placed my description of the Act, by preference, in the *Manual of Jurisprudence for Forest Officers*. The only points of contact with revenue administration are (1) that when land is expropriated, of course the land-revenue charge ceases to be paid by the former proprietors, and the revenue-roll is reduced accordingly; (2) that the Collector, from his greater knowledge of land and its value, is appointed in the first instance to make an award or offer of compensation to the owners.

the proceeding becomes one analogous at any rate to a "suit," and it is therefore necessary to provide for an appeal to rectify errors in such proceedings, and a procedure under which these officers shall be able to compel the attendance of witnesses and the production of the documents they require to inspect. These proceedings are, many of them, only quasi-judicial, but many are also regularly contested law-suits. Such, for example, is a rent case.

I am not here alluding to the cases in which land suits are referred, or may be referred, during settlement to the Settlement Officers under the law of the Panjáb, the Central Provinces, &c. In these cases the Settlement Officers are empowered as *Civil Courts*.

But to dispose of the questions arising in the course of land-revenue administration the officers sit as "*Revenue* Courts;" and in order to avoid confusion, as well as to secure the advantage of such matters being disposed of by persons specially cognisant of them, the Civil Courts have no jurisdiction where the Revenue-officer acts under the powers legally entrusted to him.

The subjects which in ordinary land-revenue business are excluded from the notice of the Civil Courts, must be learned by a reference to the several Revenue Acts themselves [2]. Those which are so excluded in questions of tenancy or rent can be seen by a similar reference to the Tenancy or Rent Acts [3]. The different provincial arrangements regarding Revenue Courts are as follows:—

In the **North-Western Provinces**, Chapters VII, VIII, and IX of the Revenue Act refer to the powers of Revenue Courts to appeals from their orders, and to procedure. The Rent Act also constitutes Revenue Courts to hear rent and tenancy cases [4].

[2] North-Western Provinces Act XIX of 1873, section 241. Oudh Act XVII of 1876, section 219. Panjáb Act XXXIII of 1871, section 65. Central Provinces Act XVIII of 1881, section 152.

[3] North-Western Provinces Act XII of 1881, sections 93-95. Oudh Act XIX of 1868, section 83. Panjáb Act XXVIII of 1868, section 42. Central Provinces Act (not yet passed).

[4] Act XII of 1881, sections 93-95; and Civil Courts here also have no jurisdiction.

In the **Panjab** the Revenue Act leaves the procedure of Courts and appeals to be regulated by rules made under section 66. When the Settlement Officer is given jurisdiction to hear land cases, it is, as I said, as a Civil Court [5]. Under the Tenancy Act, all rent suits and claims to tenant-right are heard in the Civil Courts [6].

In **Oudh** the Act contains provisions about procedure and appeals [7]. The Rent Act constitutes "Revenue Courts [8]" hearing rent and tenancy cases, as in the North-Western Provinces.

The **Central Provinces** Act does not speak of "Revenue Courts" by that name, but it specifies the powers of the different Revenue-officers, and regulates appeals [9].

The Tenant Bill will provide (as in the Panjáb) that Civil Courts are to hear suits arising between landlord and tenant; but certain miscellaneous matters connected with rents, division of produce, measurement of holdings, &c., are to be disposed of only by revenue officers. For the hearing of suits in which the Civil Court's jurisdiction is maintained, the Judge of first instance must be a Revenue-officer.

I will now proceed to describe (separately for each province) the grades of Revenue-officers.

§ 3.—*Grades of Officers.*

North-Western Provinces.—The general supervision and final appellate power in revenue cases is vested in a Board of Revenue consisting of one Senior and one Junior Member, with a Secretary and Junior Secretary. The Members divide the territorial jurisdiction and the subjects which come under their notice, according to rules of practice sanctioned by the Local Government [10].

[5] Act XVII of 1877, section 49.
[6] Act XXVIII of 1868, section 42.
[7] Act XVII of 1876, Chap. X, and rules under section 220.
[8] Act XIX of 1868, section 84, &c.
[9] Act XVIII of 1881, sections 16-26, and rules under section 19.
[10] Act XIX of 1873, section 4, &c.

Each division (or group of three or more districts) has a *Commissioner*, and each district a *Collector* with *Assistants* of the 1st and 2nd class. The ultimate revenue sub-divisions of a district are called *tahsíls*, a modern institution which has replaced the *pargana* of Mughal times. In these provinces, however, the pargana limits are perfectly well known and are constantly made use of: a tahsíl may contain several parganas[1].

An Assistant Collector of the 1st class may be put in charge of a sub-division, or more than one sub-division, and there he exercises a variety of powers[2] in subordination to the Collector.

Under section 17 of Regulation IX of 1833, officers called Deputy Collectors were appointed, and are so still[3]. They are practically 1st class Assistant Collectors, and receive powers under the Revenue Act in that grade. Being uncovenanted officers, this title distinguishes them.

Second class Assistants can only investigate and report on cases on which orders are passed by officers of higher rank: but they may be employed on other revenue business, such as maintaining the records, which do not involve decisions on contentious matters.

The officer directly in charge of a tahsil, subordinate to the Collector and to the Assistant (if there is one in charge), is the Tahsildár.

The above grades of officers are alone vested with any powers as Revenue Courts[4], but there is an important subordinate agency to be alluded to.

Under the tahsildár are qánúngos, whose chief duty is the supervision and reduction of the statistics furnished by the

[1] A further sub-division called a "tappa" is often mentioned in Reports. Sometimes the term denotes a group of villages in which one is the principal giving its name to the tappa, the others being hamlets or outliers.

[2] Defined in section 235 of Act XIX of 1873.

[3] Sections 2-15 and 19 of the Regulation are repealed, the rest is in force. (See Legislative Department edition, North-West Provinces Code, pages 101-2.)

[4] *i. e.*, power to pass orders or investigate cases under the Revenue Act or to hear rent suits. Settlement and Assistant Settlement Officers have certain powers under the Act during the progress of a settlement.

patwáris, on whose inspection of the villages, and initial record of transfers of interests, of payments of rents and revenue, and other matters, almost the whole working of the district revenue administration depends.

§ 4.—*Grades of Officers.*

Oudh.—Here the chief controlling authority in revenue matters is the Chief Commissioner [5]. Under him are the Commissioners of Divisions (a division being a group of three districts): each district has a Deputy Commissioner (Oudh being a Non-Regulation Province) [6]; and there are Assistant Commissioners of the 1st and 2nd class.

An Assistant of the 1st class may be put in charge of one or more sub-divisions of a district, and exercises powers defined in the Act [7] under the control of the Deputy Commissioner. When in such charge, he may also be invested with all or any of the powers of a Deputy Commissioner, but in subordination to the Deputy Commissioner. Assistants of the 2nd class only investigate and report on cases [8].

Tahsildárs are also appointed under the Act; their duties may be defined and powers conferred by the Chief Commissioner [9].

These powers, it will be seen, are in all essential particulars identical with those exercised in the North-West Provinces.

[5] Act XVII of 1876, section 3. At one time there was a Financial Commissioner, as in the Panjáb.

[6] I may remind the reader who does not remember the preliminary chapters sufficiently, that this difference of title, coupled with the fact that the office combines civil, criminal, and revenue powers, and that it may be held by a Military or an Uncovenanted officer, now constitutes the only practical distinction between the Non-Regulation and Regulation Provinces, at least as regards all Upper India and the Central Provinces. In Oudh even this distinction has passed away, since the Deputy and Assistant Commissioners do not exercise civil powers, for which work there are Judges, Subordinate Judges, and Munsifs.

[7] Act XVII of 1876, sections 178-79.

[8] *Id.*, section 180.

[9] *Id.*, sections 13 and 220.

The subordinate revenue agency consists of qánúngos and patwáris, just as in the North-West Provinces.

§ 5.—*Grades of Officers.*

The Panjab.—The Financial Commissioner is the chief controlling authority, and there are Commissioners of Divisions, Deputy Commissioners of Districts, aided by Assistant Commissioners and Extra Assistant Commissioners. Tahsíls or local subordinate revenue charges are held by tahsíldárs, as in the North-Western Provinces and Oudh. Nothing is, however, said in the Act about placing an Assistant in charge of a sub-division (as in the other provinces), but the Local Government has power to confer on any Assistant or Extra Assistant all or any of the powers of a Deputy Commissioner, and has power to make rules[10] to regulate proceedings and prescribe who is to do anything for which the Act makes provision. Under the rules, Assistants (usually the junior ones who have not yet passed their examination) have only "ordinary" powers,—that is, they may prepare and report on cases, but can issue no orders. Assistants with "special" powers (who have passed by the lower standard) can also pass orders as to applying the milder forms of coercion to recover arrears of revenue, and in some cases of partition. Officers with full powers have more extended powers, for which the Rules made under the Act must be referred to.

In some districts in the Panjáb,—*e.g.*, Amritsar, Ambála, and Lahore,—there are divisions of districts in which an Assistant has

[10] Act XXXIII of 1871, section 2. The Act, it will be observed, only mentions in section 2 the Financial Commissioner, the Commissioner, the Deputy Commissioner, and the Tahsildárs, because the Assistants afterwards mentioned have no powers and *locus standi* as revenue officers *till* they are invested with the powers. The rules contemplate all Assistants having (according to their experience and having passed examination, &c.) "ordinary," "special," or "full" powers, and a full-power officer may be further invested with all the powers of a Deputy Commissioner.

This institution does not appear in the other provinces. The Chapter on Tenures has explained how it came to pass that in the Central Provinces there may be a double proprietary interest in an estate throughout. The superior is then represented by the lambardár, the inferior by the sub-lambardár.

criminal and civil jurisdiction. In these sub-divisions he possesses, as an Assistant with full powers, the power of disposing of many revenue cases; and he consequently does dispose of a great deal of the revenue business; and he may be invested with the full revenue powers of a Deputy Commissioner under the Act; he is therefore practically as much in charge of the division as an officer in the other provinces.

It is often the practice in the Panjáb to let an Assistant have charge of the current business of a tahsil. According as he has special or full powers he will be able to dispose of cases or only to report and prepare them for the Deputy Commissioner's orders. But such an officer is not in charge in the sense of the North-West Provinces Act.

The Tahsíldár is[1] the executive revenue authority in a tahsíl or sub-division. I may here add that the pargana division is still known in the Panjáb and often referred to in revenue records and official reports and maps; but the tahsíl is the actual administrative unit of a sub-division. The system of qánúngos and patwárís is of course in full operation; rules prescribing the duties of these officers are to be found in the rules made under the Act[2].

§ 6.—*Grades of Officers.*

The Central Provinces.—The Chief Commissioner is (subject to the control of the Governor General) the chief controlling revenue authority[3].

Over divisions are the Commissioners, and over districts Deputy Commissioners, as in any other "Non-Regulation" Province.

The Act also recognises Assistant Commissioners (including Extra Assistants), Tahsíldárs and Náib (*i.e.*, Deputy) Tahsíldárs[4].

[1] Act XXXIII of 1871, section 2. Náib or deputy tahsíldárs, who assist the tahsíldár and prepare cases for him, exist everywhere, but are not specifically mentioned in the Act.

[2] *Id.*, section 66. Revenue Rules, Chapter I, head "Powers."

[3] Act XVIII of 1881, section 5.

[4] *Id.*, section 6, and Definition I in section 4.

Power is given in any tahsíl, district, or division to appoint an "Additional" Commissioner, Deputy Commissioner, or Tahsíldár, and to vest him with all or any of the powers of the office[5].

Nothing is said about an Assistant being in charge of a sub-division; but this can be arranged, because the Act allows[6] any Assistant to be invested with the powers of a Deputy Commissioner, as in the Panjáb.

The method in which the subordinate officers are to work is also specially stated[7]. The Deputy Commissioner is empowered either to refer individual cases to his Assistant or other subordinate for investigation and report (or for disposal if the officer has been invested with the necessary powers), or direct that the officer is to take up all cases, or certain kinds of cases, within a specified local area, either to report on or (if vested with power) to dispose of.

The qánúngo is not mentioned in the Act, but such officers exist on the tahsíl establishment; they have no powers and are only useful for purposes of record, supervision, and statistics.

§ 7.—*Résumé.*

It will thus be seen that in all the provinces there is a general similarity.

At the head of each is a chief Revenue authority who deals only with matters of final control, and in appeal, and has the power of inspection necessary to those duties. In the North-West Provinces this authority is the Board of Revenue. In the Panjáb it is the Financial Commissioner. In Oudh and the Central Provinces it is the Chief Commissioner.

In all provinces, a group of districts, called a *division*, is presided over by the Commissioner, who is also a controlling and inspecting officer with appellate powers.

In each *district* we see the Collector, or the Deputy Commissioner with his Assistants, and his native subordinates in each

[5] Act XVIII of 1881, section 10.
[6] *Id.*, sections 11-15.
[7] *Id.*, sections 15-16.

"tahsíl," (ultimate revenue sub-division of a district). The authority rests with the Collector or Deputy Commissioner, unless we are dealing with a sub-division where an Assistant is invested with these powers. The other Assistants according to their grade exercise certain more or less limited powers; while the lowest grade Assistant and the Tahsíldár usually only report on or prepare cases for the orders of the District Officer; they also record certain facts, and exercise only a direct power of deciding or passing orders, when such powers are specially given them by the Act or Rules in force in the province.

§ 8.—*Local machinery for statistics and accounts.*

I must now proceed to notice the important machinery by which matters are brought up from the place where they occur to the authority at head-quarters. The same machinery also is the means not only of collecting statistics which will be wanted at any future settlement, but also of keeping up the revenue records of the time, both as regards the collection and realisation of the revenue and the maintenance of the records of rights.

On the accuracy and the efficiency with which this duty is performed a great deal is dependent. Not only is the possibility of dispensing with lengthened operations at a revision of settlement dependent on it, but almost all our knowledge of the statistics of production, the advance of agriculture, and the prosperity of the district, is also bound up with it.

The village headman and the village patwári are the prominent elements of the machinery, and it is important that their duty should be well understood.

The supervision of these village officials is directly entrusted to the qánúngo, who in fact is the link that connects them with the tahsíl, to which all their reports and records go in the first instance.

It is the tahsíldár, as the local representative of revenue authority, who passes it on with his report and recommendation for the orders of the District Officer.

§ 9.—*The Tahsíldár.*

The tahsíldár is thus a most important functionary. On his intelligence, knowledge of the district, and experience, depend, to a great extent, the working of the whole system.

It is not necessary that he should have large powers of *deciding* matters, but he generally reports on all cases, sending them up for the orders of the district officials. His great duty is to watch the progress of the revenue collections and the state of his tahsíl, to supervise the qánúngo, the patwáris, and the headmen, and see that none neglect their duty.

He is usually empowered to enforce, of his own authority, the milder process of coercion when necessary to get in arrears of revenue. He is allowed also to make certain "dákhil-khárij" entries, *i.e.*, to record changes in the record of rights in some cases. In the Central Provinces this is done always under the orders of the District Officer. He also can order the repair and maintenance of boundary marks, and act in certain cases of partition of estates, subject to sanction [8].

§ 10.—*Duties of the Qánúngo.*

The village revenue machinery which thus supplies the original data and facts for record, which sends in the ultimate revenue accounts, and so forth, must engage our attention in some detail. First I will take the Qánúngo.

§ 11.—*The Qánúngo in the North-West Provinces.*

In order to supervise the patwáris directly and see that they really *do* their work and keep up their books accurately, a system of inspection is carried out through the qánúngo, an officer deriving

[8] For the North-Western Provinces, see S. B. Cir. Dep. IX, page 161. At page 171 also will be found an account of an inspection book to be written up when a tahsíl office is inspected. A glance at the headings of inspection will at once show the variety of duties involved in a tahsíldárship.

In Oudh the tahsíldár's duty is described in the Circular 4 of 1878.

In the Panjáb the rules under the Land Revenue Act explain the powers of tahsíldárs (head I, Powers), Part II.

his title from the old Mughal system of revenue, but exercising functions in many respects, if not entirely, different from those of his historic predecessor.

The patwári receives his blank books from, and is constantly supervised in the course of their being written up by, the qánúngo appointed under the Revenue Act[9]. There are two or three of them to each tahsil,—one, generally the elder, is kept in the office as the "Registrar qánúngo;" the others are the active or "supervising qánúngos;" over them all is an experienced sadr-qánúngo[10], who remains at the Collector's head-quarters. The office is by law hereditary, if a qualified heir can be found in the direct line of descent. A qánúngo's heir who is designed to succeed him, must be sent to school and must pass an examination[1]. Various subordinate posts connected with revenue work are then available to him when he grows up, and in these he may gain experience till such time as he actually succeeds to the appointment. The "Registrar qánúngo" pays the patwáris, keeps (at the tahsíl) the "filed" patwári's papers, keeps and issues the blank volumes of forms; he also makes reports to the Revenue-officers when called on, and keeps up a series of registers which need not be detailed here. Some of them are, in fact, registers which give the totals of the patwári's books, so that on each register one line only has to be written annually, being a transcript of the corresponding totals in the patwári's records.

"Supervising qánúngos" are charged with constant supervision and inspection of existing patwáris, with the instruction of the patwáris' heirs in their future duties, and with making local enquiries. They keep diaries showing their occupation[2].

The "sadr-qánúngo" remains at the district head-quarters[3]. He compiles statements for the whole district from those of each

[9] Section 33.
[10] S. B. Cir., Part III,—Rules for Qánúngos.
[1] *Id.*, Chap II and Chap. IV, § 30.
[2] *Id.*, Part III, Chap. 15, page 35.
[3] *Id.*, Chap. XXII, page 47.

tahsíl staff. He also makes a tour in the cold season, and sees how the tahsíl qánúngos are working.

§ 12.—*The Qánúngo in the Panjáb.*

In this province the qánúngo's duties will be found described in the same chapter of the Rules under the Revenue Act which details the duties of the patwári. They are not formally classified into supervising and "registrar" as in the North-Western Provinces, but are generally supervised by a "sadr" or "district qánúngo" at the Deputy Commissioner's head-quarters.

The duties are succinctly described in the Rules [4], which may here be quoted:—

"(1) To maintain registers of village accountants and village headmen, and to report for orders all vacancies in these offices.

"(2) To maintain registers of assignments of land revenue, and to report all lapses of such assignments.

"(3) To maintain registers of mutations of proprietors, mortgagees, and other incumbrancers and tenants with right of occupancy, and to bring all changes to the notice of the tahsíldár for orders.

"(4) To assist at all measurements of land by revenue-officers, all local enquiries in the Revenue Department, and all audit of accounts of estates held under direct management.

"(5) To compile and produce, when required by any Court of Justice or any revenue-officer, information regarding articles of produce, rates of rent, and local rules and customs.

"(6) To superintend and control the patwáris, examine and countersign their diaries, ascertain that their records are correctly maintained, and all changes entered and reported, and test the annual village returns prepared in duplicate by them, retaining one of the copies until the papers of the following year are filed, and forwarding the other to the District Office after examination, and to discharge such other duties as may be assigned to them with the sanction of the Financial Commissioner.

"(7) He shall visit the circles of the patwáris subordinate to him, in order to ascertain by personal observation and enquiry on the spot that their duties are punctually and correctly performed, that no changes, a report of which is required, are overlooked, and that the boundary marks are properly maintained.

[4] Rules, Head B., Chap. II.

"(8) The district qánúngo shall be the head of the qánúngo establishment of the district:

"1.—The annual papers prepared by patwáris shall be examined and tested by him before they are sent into the Record Office.

"2.—Mutation and partition cases shall be examined and checked by him when received from tahsíls, and all reports and orders relating to the appointment, dismissal, or control of lambardárs and patwáris shall be communicated to him before the files are sent into the Record Office.

"3.—He shall check alluvion and diluvion returns, and accompany the Assistant or Extra Assistant Commissioner deputed to test the measurements and report on the settlement of lands affected by river action.

"4.—He shall from time to time examine on the spot the registers and records maintained by qánúngos and patwáris, and bring to the notice of the tahsíldár and the Deputy Commissioner any errors or omissions which he may discover."

§ 13.—*The Qánúngo in Oudh.*

Qánúngos are provided or appointed by the Act as Superintendents of Revenue Records. I have not seen any rules relating to them [5].

§ 14.—*The Qánúngo in the Central Provinces.*

This functionary is not mentioned in the Act, but I understand that he is employed as a member of the tahsíl establishment much as in the other province. Indeed, where the system of patwáris is in force, some such supervising agency would seem necessary, not only to instruct and direct the preparation of records, but also to abstract and compile the information received village by village.

§ 15.—*The Patwári.*

The patwári is, speaking generally, a Government servant [6].

On the successful performance of his duty depends the accurate maintenance of the records which may be said to be "started" at

[5] Oudh Act, section 220.

[6] In the Panjáb and North-Western Provinces he is purely a Government servant. In Oudh his position is slightly different. In the Central Provinces the statement of the text is perhaps hardly true.

settlement, but require to be kept up to date by timely notice of deaths, transfers, and successions which affect the rights in land and the succession to village offices. On the patwári also depends the maintenance of the village accounts, and the record of payments made by ignorant tenants to the landowners, or of revenue by co-sharers, through the lambardárs, these persons being usually unable to keep their accounts themselves. Lastly, on the patwári depends in a great measure the record of statistics and facts about crops and the area under different kinds of cultivation, the sinking of wells, and other facts which will at a future settlement be sought for and compiled, to enable the assessment to be revised, and which also show the present condition and progress of every village, and whether the revenue at its present assessment can be realised steadily or not.

Though exhibiting a very general similarity, and though the results aimed at are precisely the same, each province nevertheless has its own rules, and I therefore must notice the patwári of each province separately. The system has, perhaps, been brought to its greatest perfection in the North-West Provinces, and I shall therefore describe the system there pursued as a sort of standard.

§ 16.—*The patwári in the North-Western Provinces.*

Here patwáris are required to be appointed by the Land Revenue Act. A patwári is not ordinarily appointed for each village, but over circles of villages as arranged by the Collector[7].

The landholders in the circle *nominate* according to local custom, but the Collector (or Assistant in charge) controls the appointment. The office is not necessarily hereditary, but preference is given to a member of the family of the late holder, if he is qualified. The patwári has a salary the amount of which is fixed by the Board of Revenue, and a rate is levied along with the land revenue, to meet the cost of this salary. Every patwári is a public servant, and

[7] North-Western Provinces Revenue Act, section 23 *et seq.*

the records he keeps are public property[8]. His duties and the forms of records and accounts which he has to maintain and submit periodically have all been prescribed in a very complete group of circulars by the Board of Revenue[9].

In order to provide that future patwáris shall be sufficiently educated to enable them to perform their duty, rules are made compelling the successor-designate of the existing official to be sent to school. Means are also provided through the agency of the qánúngo for teaching the patwáris to survey.

§ 17.—*Patwáris' papers.*

The "patwáris' papers" are so constantly alluded to in revenue proceedings, that it will be desirable to give some account of these documents. They may be grouped under the head of (1) village accounts, (2) official records for the information of the Collector, for use at future settlements, &c.

For the purposes of village account he used to keep—

(*a*) A "siáha" or daily cash book in which all payments to, or disbursements by, the proprietors or their agents on the revenue or rent account were entered. In the North-Western Provinces this is now obsolete.

(*b*) The principal account, or "bahi-khátá," is a ledger showing the holdings and accounts of each proprietor and cultivator.

Besides there are—

(*c*) The wásil-báqi. This is a rent account showing the holdings and the tenants who cultivate them, the rent claimed for each, with the amount paid, the balance, and the arrears, if any.

(*d*) The "jama'-kharch." This is a profit and loss account of the proprietors. Disbursements for revenue, cesses, lam-

[8] See Act XIX of 1873, section 35.

[9] Circulars about patwáris are now grouped together in Part III of the S. B. Circulars.

bardár's allowances, and village expenses are entered on one side, and the receipts from rents and other sources of common profits on the other.

Besides these accounts, the patwári keeps for general purposes a "roznámcha" or diary, which is simply a narrative of everything that he does, or that happens in his village or circle.

These books are preserved for four years after the close of the year to which they relate.

But the patwári has also to maintain another set of records relating to the condition of the village and its produce, showing the improvement or deterioration of the estate, and containing other statistical information of a similar character.

The maintenance of the village maps is also an important object.

If the maps, once correctly drawn out at settlement, could be accurately kept up, so that all changes in cultivation and other features were carefully entered in distinctive red lines, the expense of re-survey at future settlements might be almost wholly avoided. And this object is aimed at under the improved system of cadastral survey which has recently been introduced. In the same way with the statistical records. If a really reliable account of progress in cultivation, of the produce of land, and the rise or fall in value of land as shown by the *true* rental, the actual terms which proprietors can get for the use of their land, were available, the task of revising settlements, and of judging whether revision is necessary at all, would be almost indefinitely lightened[10]. It is also needless to point out how valuable such statistical information is for many other purposes connected with good government.

Great effort is therefore directed both to the proper preparation of the patwári's papers and to the maintenance of the maps.

Both objects are dependent on a field-to-field inspection done under supervision; and the first thing is to furnish the patwári

[10] See an excellent note prefaced to the Board's Circulars, Part III.

with copies[1] of the village maps when these have been prepared with sufficient accuracy. He has also a "khasra" or field-book, or index to the map. This shows the numbers of the fields as in the settlement khasra, but the columns are all blank, and it is the patwári's duty now to fill them, according to actual facts as they are at the time when he makes his inspection[2]. During the inspection, also, he marks all changes in the size and division of fields, or any other changes, such as roads, drains, or wells, in his village map. These maps and their corresponding tabular khasras for each year are filed and kept in the tahsil, being deposited there as soon as the year closes.

A second volume of records consists of statements or abstracts compiled from these field khasras, so as to show in convenient forms, and separately, the different classes of facts. These statements are :—

(1) "*Milán Khasra,*" a statement showing the total area of the year as compared with that of the previous year, under the heads of cultivated, culturable, and barren; and showing also what land is irrigated and what is unirrigated, how much is barren, covered with trees, and so-forth. The number of wells of each kind is also stated.

(2) "*Naksha jinswár,*" or abstract statement of crops. This shows the area under each kind of crop, both on irrigated and unirrigated land. It is prepared separately for each harvest.

(3) "*Naksha bághát,*" a statement of groves and orchards.

(4) "*Jamabandi.*" This paper is the annual rent-roll to which allusion has been made. It is brought on separate forms for tenants who pay *cash rents* and those who pay *in kind.*

(5) Lastly, there is the *Dákhil-khárij Khewat,* or register showing all the changes in the proprietorship and shares in land. It is prepared so as to show, first, the "opening khewat" or state of proprietorship as it was on the last day of the previous year; and, second, the intermediate changes or "closing khewat" as it stands at the close of the present year.

[1] Now usually prepared by photozincography.

[2] For example, his khasra before the rabi' harvest will show all the fields, &c., that have spring crops of different kinds, and when again he makes an inspection in the kharíf he will show those that bear sugarcane and other autumn crops.

All these records are bound into four volumes:

STATISTICAL RECORDS . .	*Volume I.*—The Khasra. *Volume II.*—The land and crop statements compiled or abstracted from the Khasra. *Volume III.*—The Jamabandi and Dákhil-khárij Khewat.
VILLAGE ACCOUNTS . .	*Volume IV.*—The Wásilbáqi and Jama-kharch, or village accounts.

§ 18.—*The Patwári in Oudh.*

In this province the system has not received quite the same development as in the North-West Provinces.

It must be borne in mind that originally, under the Native system, the patwári was purely a village servant, getting paid by certain perquisites, and perhaps a bit of land held free or at a favourable rate. In Bengal, as we have seen, the system of patwáris on this basis has fallen into disuse, not, however, without much difference of opinion among revenue-officers as to the wisdom of permitting it, and not without some serious difficulty in Revenue-administration, where the estates of "zamíndárs" are numerous and small. In the North-West Provinces it was early seen that with proprietary communities and small holdings, the patwári was a most essential institution. He was therefore lifted up out of his original position; he was made a Government servant and given a fixed salary. His education was provided for, and his duties multiplied and minutely prescribed: only the appointment and the succession to the office are regulated to some extent by ancient custom.

In Oudh, where the patwáris had long been regarded as the servants of the landlords, and remunerated by them in such manner as they thought fit,—by grant of land, by cash allowances, or by customary dues levied on the landlord's tenants—it would have been distasteful to introduce a complete change and make the patwári's appointment to depend entirely on the District Officer, and his remuneration to be a Government salary

raised by a cess. It was decided, therefore, not to impose any "patwári's cess," but in their kabúliyats, the landlords engaged that it should be open to the Government hereafter to make such modified arrangements as they thought fit. Finally the matter was dealt with in the Land Revenue Act[3]. By this the Chief Commissioner was authorised to require the appointment of a patwári for any village or group of villages or other local area, and to make rules for regulating the qualifications and duties of these officers. In estates other than taluqas the Deputy Commissioner is empowered (subject to rules made by the Chief Commissioner) to appoint, suspend, and dismiss the patwáris; and the Chief Commissioner is also authorised to provide for their remuneration and supervision.

In taluqa estates the law leaves these matters to the taluqdárs, who are not interfered with, so long as they make proper arrangements for the performance by the patwáris of their prescribed duties, and for the submission of the accounts and returns required by the Act and Rules. On the failure of the taluqdár to make such arrangements, the Deputy Commissioner is authorised to take action, and in cases of continued or repeated neglect the Chief Commissioner may declare that[4] the rules for estates other than taluqdári are to be applied. It has not yet been found necessary to exercise this power, to make a distinction which is a rather invidious one, between taluqdári and non-taluqdári estates; and the practice has been to allow all classes of proprietors, equally, to appoint their own patwáris and to exercise the power (which is by law only secured to the taluqdár) of fixing the remuneration, dismissing and suspending; but this is allowed as long as men are appointed according to the standard of qualification required, and as long as their duties are properly performed.

Patwáris are required to hold certificates of qualification in reading and writing and arithmetic, and in the duties of a patwári.

[3] Act XVII of 1876, Chapter XII.
[4] *Id.*, section 213.

The maximum area for one patwári is land paying a jama of Rs. 2,000 (or Rs. 3,000 in a taluqdári estate).

The patwári keeps up books much as in the North-West Provinces, has his village account, his diary of occurrences, his field list, which he checks and fills up by the inspection of every field, just in the same manner as already described.

He prepares at *the end of the year*, from the ledger which shows the payments of tenants, &c., a rent-roll or "jamabandi" showing the rents that *actually have been paid* in the previous year.

§ 19.—*The Patwári in the Panjáb.*

Here the duties of patwáris are described in detail in the rules made under the Revenue Act[5]. One is appointed for each mahál or estate, unless two or more smaller maháls have been united into a "circle[6]."

The patwári is nominated by the headmen, subject to conditions of fitness and approval by the Deputy Commissioner. He is paid by a fixed percentage (not exceeding 6¼ per cent.) on the revenue, which is collected by the headmen, and paid to the patwári on his receipt. His duties being concisely stated in Rule 15 under the Act, I shall not apologise for extracting it, although it repeats to some extent what has been stated under the North-West Provinces.

"The duties to be performed by patwáris shall be as follows :—

"(1) To keep a diary in which every fact coming to their knowledge, bearing on the preparation of their returns, or upon the revenue administration of the estates in their circles, shall be entered at the time, the date of the entry, and the manner in which the fact was learnt being shown.

"(2) To keep a ledger containing the accounts of demands upon and payments by the proprietors and tenants of each estate.

[5] Head A, Chapter II.

[6] In especially large or heavily worked estates or circles an assistant patwári may be appointed (Rules, II, § 4).

"(3) To report [7] to the qánúngo the death of village officers and of assignees of land revenue, and all transfers of, or successions to, proprietary right or rights of occupancy.

"(4) To conduct the survey and prepare the maps and measurement papers of the estate or estates included in the circle.

"(5) To report to the tahsíldár without delay the occurrence of calamities of season within the estate or circle.

"(6) In the cold season of each year to inspect all the fields included in each estate in the circle, and, while so engaged, to ascertain the crops grown during the kharíf season and those sown for the rabi' season, and to record all changes affecting the village field map or the preparation of the annual papers, and all mutations and lapses of assignments of land revenue which have not already been reported for orders.

"(7) To prepare and file in duplicate with the qánúngo to whom they are subordinate, as soon as may be after the annual inspection, a statement of the crops grown in each estate during the year, and not later than the 1st October, the remaining annual returns for the past agricultural year beginning with the kharíf and ending with the rabi' season.

"(8) To preserve the copies of settlement records and records of subsequent measurements which have been made over to their charge, and the annual papers of each estate in the circle for the past year.

"(9) To perform all other duties and services which may be required of them by the Deputy Commissioner."

The accounts and statistical records for the year (besides the village account and diary) are kept just as in the North-West Provinces [8], and consist of the mílán khasra, or fluctuations in the area cultivated and uncultivated, irrigated and unirrigated, &c.; the jamabandi, or rent-roll; the naksha jinswár, or record of crops for each harvest; the jama-kharch, or village account current; and the dákhil-khárij khewat, or record of the changes in the proprietary interests of the village.

The patwári is bound to furnish extracts from his records to persons who want them in order to file suits, &c.

[7] The Report is called the "fauti-náma," and states the facts regarding the deceased's holding and the *primâ facie* right of succession.

[8] Only the Panjáb patwári does not keep a list of orchards, as this is not a sufficiently common feature, nor do I find mention of a tenant's wásil-báki; the tenant's accounts sufficiently appear from the village account book.

§ 20.—*The Patwári in the Central Provinces.*

The patwári or pándyá (as he is sometimes called) has at present duties very similar to those above described. He has to see that all proprietary changes are duly reported at the tahsíl, so that the "dákhil-khárij" may take place. He also keeps a "lagwán" or rent-roll showing the holdings of the cultivators and the rents each has to pay for the year. A good deal of correspondence at one time took place as to the system. It was proposed to introduce the North-West Provinces plan of patwáris' "circles," each official being a Government servant, paid by a fixed cash percentage on the jama. This would be to upset the old Native system, under which the patwári was a village servant of a quasi-hereditary character. If he were purely a Government servant, he would come from the usual official class of Maráthá Brahmans, and would only induce discord in the village and make the people dependent on him, instead of letting them learn to know their own rights and liabilities. It was finally decided to maintain the Native system, merely placing the patwári under the control of the District Officer. Each "wájib-ul-'arz" was to define the custom of the village as regards the patwári, who would be appointed and maintained accordingly [9].

The Revenue Act has left scope for the maintenance of these principles.

It does not say that the patwári is a public servant, nor that one must be appointed, but it does say [10] that his papers are public documents and public property. At the old settlements the maintenance of a patwári was sometimes made optional; and the Chief Commissioner may make rules as to how the Deputy Commissioner is to deal with these cases, and what is to be done if a patwári is not appointed. In all cases, the Chief Commissioner may make rules as to the selection and qualifications of patwáris, and the appointment of substitutes for persons having a hereditary

[9] Circular B appended to Settlement Code. See also a note on the subject in Mr. Bernard's Memorandum on the Chánda Settlement.

[10] Act XVIII of 1881, sections 46-47.

claim to the office, but who are personally unable to act. Rules may also be made prescribing the duties of patwáris. No lambardár can be required to levy more than 6 per cent. on the revenue for the remuneration of a patwári. This does not apply, however, to cases coming under section 145 of the Act, *viz.*, those above alluded to, where it was necessary to appoint a patwári by the District Officer's order.

§ 21.—*The Village Headmen in the North-West Provinces.*

The village headmen are called [1] *lambardárs*. "The lambardár of an estate is a person who, either on his own account, or jointly [2] with others, or as representative of the whole or part of a proprietary community, engages with Government for the payment of the land revenue."

His duties are to pay in the land revenue to the local treasury[2] to report to the qánúngo encroachments on roads or on Government waste lands, and injuries, &c., to Government buildings, and also the same with regard to boundary marks.

If he is representative of a number of proprietors he has to *collect* the revenue and cesses, also to defray, in the first instance, the "village expenses," and reimburse himself in accordance with village custom. He must account to the co-sharers for these on the occasion of the "bujhárat" or audit of village accounts. The lambardár as the representative of the body acts generally as agent for the sharers in their dealings with Government.

He is appointed in the North-West Provinces according to local custom, subject to a right on the part of the Collector to refuse a nominee on certain specified grounds, chiefly regarding his competence, character, and his being a sharer (in possession) of the mahál.

[1] If there happens to be only one proprietor in an estate or in a "patti," the owner is owner and lambardár in one. Most commonly there are several, and the lambardár is then the representative.

[2] S. B. Cir. Dep. III, page 9, issued under section 257 of the Revenue Act. These duties are irrespective of the responsibility enforced by the criminal law to report crime, &c.

§ 22.—*The Village Headmen in Oudh.*

Rules regarding lambardárs were published in 1878[1].

In estates not being those of taluqdárs they exist as elsewhere and get the usual remuneration of 5 per cent. on the jama. In taluqa estates the lambardári of the village under the taluqdár is an honorary office.

The rules regarding the lambardár in non-taluqdári estates are exactly like those of the North-Western Provinces. In taluqdári estates the lambardár becomes the revenue engagee, not with Government, but with the taluqdár. The lambardár is appointed according to local custom, but he is required to be able to read and write Hindi and to understand the village accounts. If there is no local custom, the appointment is elective, subject to certain conditions of competency and other matters to be found in the 11th rule.

The duties of an Oudh lambardár are—

(1) To pay—

(a) the Government demand on account of revenue and cesses to the officer appointed to receive it, when he represents a mahál or part of a mahál held in direct engagement with the Government;

(b) the rent payable to the taluqdár, when he represents a mahál or part of a mahál held in sub-settlement or under a heritable, non-transferable lease.

(2) To report to the qánúngo all encroachments on roads or on Government waste lands, and all injuries to, or appropriations of, nazúl buildings situated within the boundaries of the mahál.

(3) To report to the tahsildár the destruction or removal of, or injury to, boundary marks, or any other marks erected in the mahál by order of Government.

In mahál where the lambardár is a representative of other sharers, his duties are, in addition to those enumerated above—

(4) To collect in accordance with village custom—

(a) the Government demand on account of revenue and cesses, when he

[1] Notification (Revenue) No. 2899 R., dated 27th September 1878, and republished as Circular 23 of 1878. Under section 220 (a) of the Revenue Act, the sanction of the Governor General in Council is not required, the words in the Revenue Act having been repealed under Act XIV of 1878 to assimilate the powers of the Chief Commissioner in Oudh with those of the Lieutenant-Governor of the North-Western Provinces, the two offices being now united.

represents a mahál or part of a mahál held in direct engagement with the Government;

(b) the rent payable to the taluqdár, when he represents a mahál or part of a mahál held in sub-settlement or under a heritable, non-transferable lease.

(5) To defray, in the first instance, village expenses, and to reimburse himself in accordance with village custom.

(6) To render accounts to the co-sharers of the transactions referred to in clauses 4 and 5 of this rule.

§ 23.—*The Village Headmen in the Panjáb.*

The manner of appointing and the duties of the lambardár are laid down in the "Rules[4];" the number is kept as low as possible, but one is, if possible, appointed for each principal or well-known sub-division of an estate. The lambardár must be a sharer in possession, and must not be a man obnoxious to the majority of the proprietary body. The post is ordinarily hereditary if the heir is qualified.

In some cases there is an "a'lá" or chief lambardár over a number of minor headmen: he is elected subject to fitness and approval by the District Officer (or Settlement Officer if a settlement is in progress).

Opinions vary as to the utility of the institution of the a'lá lambardár, but it is usually found necessary, where the divisions in one estate are so numerous that the lambardárs form a considerable body in themselves.

The duties of a lambardár are stated in the Rules[5]:

"In addition to the duties imposed upon village headmen by law for the preservation of the peace, the report, prevention, and detection of crime[6], and the surrender of offenders, and as representatives of the proprietary body for the purpose of engaging for the revenue and paying it when due, a village headman shall—

"(1) attend the summons of district authorities and act for the village community in all their relations with Government;

[4] Head A, Chapter I.

[5] Rules, A, Chapter I, page 16.

[6] This alludes to the duties imposed by section 90 of the Criminal Procedure Code or other such provision of the law.

"(2) collect the rents and other income of the common land, and account for them to the community;

"(3) receive the quota of the land revenue, cesses, and other village charges due by each of the proprietors of whom he is the representative headman, and pay the village officers their authorised remuneration;

"(4) acknowledge every payment received by him in the books of the co-proprietors and tenants;

"(5) defray all village expenses, rendering accounts annually to the village proprietary body;

"(6) report to the tahsildár all deaths of assignees of land revenue and Government pensioners residing in the village, or their absence for more than a year;

"(7) report to the tahsildár all encroachments on roads or on Government waste lands, and injuries to, or appropriation of, nazúl buildings situated within the boundaries of the estate;

"(8) report to the tahsildár the destruction, removal, or injury of the boundary marks of the estate, or of any portion of the estate which has been separately demarcated;

"(9) report any injury to survey stations or Government buildings made over to his charge;

"(10) carry out to the best of his ability any orders that he may receive from the Deputy Commissioner, requiring him to furnish information, or to assist in providing supplies or means of transport for troops."

The lambardár is remunerated by being allowed to collect along with the Government revenue an extra sum equal to 5 per cent. on the revenue. This is called the "pachotra[7]" or haq-lambardári.

§ 24.—*The A'lá Lambardár in the Panjáb.*

The duties of a chief or a'lá lambardár are[8] that "all orders shall be communicated through him, and he shall be primarily responsible for such orders being carried out, and for the discharge of the other duties of the village headmen, except those relating to the collection of rent or revenue, and to the payment of the land revenue and cesses, and of the remuneration of village officers, and

[7] Properly panch-uttara, an "addition" of "five" per cent. on the revenue allowed to the headman.

[8] Rules, A, Chapter I, page 19.

to the disbursement of village expenses, in regard to which matters he shall be responsible only as one of the village headmen."

§ 25.—*The Zaildár.*

In the Panjáb an institution has been revived or created (whichever it is) called the zaildár. A local landed proprietor of influence and position is appointed over a "zail" or circle of villages[9]. His appointment is according to the votes of the headmen, but with reference to fitness and service to the State. The office is not hereditary nor salaried, but certain allowances are made. The zaildár is the local representative of Government, and sees that orders are obeyed and published when sent for this purpose. He is bound to give notice of serious crime; and a good and influential zaildár may be of much use in repressing crime. He also supervises generally the headmen and patwáris, sees to the maintenance of boundaries, and attends at land-measurements. He must give notice of serious crime and be in attendance on officers visiting his circle on public duty.

§ 26.—*Lambardárs and Sub-lambardárs in the Central Provinces.*

Here the lambardár is found in village communities as elsewhere. He is the representative of a body, or if there is only one proprietor, he is the lambardár himself. Where there are two proprietary bodies, a superior and an inferior, the inferior body is represented by one or more "sub-lambardárs." Both kinds of headmen are recognised by the Revenue Act in Chapter XI. But in these provinces the lambardár's functions are legally confined (section 138) to collecting and paying into the treasury the land-revenue payable through him, and to collecting and paying in the dues on account of the remuneration of the patwári, watchman, and muqaddam, or on account of expenses which the muqad-

[9] Barkley's edition of Directions, page 113; and Appendix IV, *id.* "Zail" is really a quasi-feudal term implying a subordinate to a chief.

dam is authorised to receive and to recover from the lambardárs or sub-lambardárs of his village[10].

§ 27.—*The office of Muqaddam.*

The "executive" functions which in the other provinces are performed by the lambardárs along with their revenue duties may, in the Central Provinces, be separately performed by an "executive headman" or muqaddam.

This office has been recently provided in the Revenue Law of 1881. In the old days there was one revenue farmer (málguzár) or one headman to whom the Government looked, but now, since the málguzár or patel has developed into proprietor, there is no longer one man. The proprietary right is divided among the different descendants and members of the family, all of whom are not resident.

It is convenient therefore to select one man, who performs the executive duties of lambardárs, while the latter have the revenue responsibility of the proprietary families. The appointment of a muqaddam or "executive headman" also enables Government to provide for the management of the village in those cases in which tracts of country have been bought up by town capitalists, and there are consequently no resident lambardárs[1].

Under the Revenue Act, the Chief Commissioner is empowered to make rules for the appointment, remuneration, and removal of lambardárs, sub-lambardárs, and muqaddams. Regard is to be had in framing such rules to local custom and hereditary claims[2]. In every village where there are resident málguzár proprietors, one of such shall be the muqaddam. The muqaddam has the usual

[10] It will be observed that the term "patel" is not used in the Act. In the Jabalpúr division, I am informed, it is falling into disuse. In the Nimár Settlement Report, sections 138-40, mention is made of a local institution—the tenant's headman or chaudhri. This term is rarely found in other places, but there it has a different meaning; it is a survival of the title of the old Mughal institution—the chaudhri.

[1] *cf* Act XVIII of 1881, section 137.

[2] See "Statement of Objects and Reasons," § 16. Before the muqaddam was introduced, the non-resident proprietor had a local agent called his kámdár, and servant called havaldár.

liability of landholders under the Criminal Procedure Code, section 90, and other similar provisions.

The duties of the muqaddam are enumerated in section 141 of the Revenue Act; they include the supervision of patwáris and village watchmen, and the payment of their allowances, the keeping of the village in good sanitary condition under rules made in this behalf, the reporting of births and deaths, giving aid in revenue collections, and reporting violation of rules made for the preservation of the village jungle.

§ 28.—*The Village Watchman.*

It is perhaps improper to place village watchmen side by side with headmen and patwáris, because they have no revenue duties of any kind; but as they are provided for in settlements and form part of the village organisation, it is not right to omit all mention of them from a Revenue and Land-tenure Manual. In all places where any form of village system has survived there are other village servants, artisans, &c., some of whom get customary dues in grain and bits of land, either rent-free or at favourable rates. Among these the only ones that are regarded in any way as under public regulation are the village watchmen or "chaukidárs," as they are usually called in the North-Western Provinces, Oudh, and the Panjáb.

In some provinces attempts have been made to organise these into a rural police, but generally they are retained as village messengers and assistants in serving notices and summoning people when wanted, and to serve as watchmen. They are usually paid by a fixed cash or grain allowance, their holdings in land under the Native system being resumed. In the Panjáb they are subject to rules, and may be vested with certain powers as provided in the Panjáb Laws Act IV of 1872, which may be referred to for details[8].

[8] There are numerous Acts relating to village watchmen which it is not necessary to detail. See North-Western Provinces Act XVI of 1873, Oudh Act XVIII of 1876, section 29, Panjáb Act IV of 1872 (as amended by XXIV of 1881), section 39A. For the Central Provinces I have not found any Act or law.

In *Oudh* the "kabúliyat" or revenue engagement contains clauses enabling Government to charge the landowners with the expense of a suitable arrangement for the support of these chaukidárs. But, as in the case of patwáris, as long as the men are kept up and their duties are performed, Government does not charge the proprietors with a cess, but leaves them to make their own arrangements for the necessary remuneration.

In the *Central Provinces* these servants are called most commonly "kotwál" or "kutwár;" they are also village servants, and are not organised as a police force [4].

They are paid according to custom recorded in the "wájib-ul-'arz" by perquisites and allowances (haqs), and sometimes by rent-free plots of land. The Revenue Act so far recognises them as to prescribe that the Settlement Officer may enquire into, record, and confirm the customs relating to their remuneration.

I have described in the chapter on tenures the institution of village artisans and menials, but as these are not in any way public servants, they demand no notice in this section.

SECTION II.—REVENUE BUSINESS.

I now proceed to describe briefly the chief revenue duties under the heads of—

(*a*) Maintenance of the record of rights.
(*b*) Partition of estates.
(*c*) Minor settlements necessitated by the action of rivers, lapse of rent-free grants, &c.
(*d*) Maintenance of boundary marks.
(*e*) Collection of the revenue.
(*f*) Rent cases.

They are recognised in sections 8, 10, 11 of the Cattle Trespass Act I of 1871. The General Police Act (V of 1861), section 21, provides that village watchmen are not under the Act, unless enrolled under its provisions; but section 47 gives power to the Local Government to provide that the District Superintendent of Police may, subject to the Magistrate of the district, exercise a general superintendence over them.

[4] Although this was at one time contemplated, the rule also that they were to get a fixed pay of Rs. 3, to be raised by a household cess, has been cancelled (Circular B, Settlement Code).

(*A.*)—MAINTENANCE OF THE RECORDS.

§ 1.—*The nature of it.*

The record of rights as prepared at settlement is maintained correct under official signature up to the point of its being handed over with the other papers of the "settlement misl" to the Collector's (or Deputy Commissioner's) office.

And it is (with an exception presently noticed) never altered, *i.e.*, in its own pages, but registers are kept to account for all subsequent changes. There may be errors, corrected by the Court or by consent of the parties; owners die and are succeeded by one or more heirs; lands change hands by sale or mortgage,—all these have to be recorded. Partitions of estates may also necessitate new entries.

§ 2.—*Provisions regarding records in the North-West Provinces.*

The North-West Provinces Act[5] requires the Collector to register all such facts, the Board prescribing the forms, and the Local Government prescribing the fees for registering them. The process is commonly spoken of as "dákhil-khárij," literally "entering" (one man's name) and "striking out" (another's).

All persons succeeding to any *proprietary* right, by any process of transfer whatever, are[6] bound to report the fact to the tahsildár, who must get the orders of the Collector (or of the Assistant in charge) before recording the change. The Collector causes an enquiry to be made as to the *fact*. Questions of right are not of course entered upon.

But there may be a dispute as to possession. A person out of possession, for example, will often try and assert his (or his supposed) right by selling or mortgaging, and when the vendee applies to have his name entered, it appears that some one is already in possession, who declares that he never sold the land and has no intention of doing so; or a widow sells and some relative asserts that the transfer is invalid. In such a case the Collector will decide on the basis

[5] Act XIX of 1873, section 94. [6] Section 97.

of possession. But if he is unable to satisfy himself as to which party is in possession, he must ascertain by summary enquiry the party best entitled to the property, and must put such person in possession. He will then record the change, subject to any decree that may be passed subsequently by the Civil Court.[7]

All changes in landed interests other than proprietary are recorded by the qánúngo and patwári, and only if *there is a dispute*, the matter is reported for the orders of the Collector or Assistant.

§ 3.—*Provisions of the Oudh Law.*

The Act[8] requires, first of all, a series of registers to be made out "on the basis of the settlement records," and occurrences rendering alteration of these necessary are to be noted. The Chief Commissioner is to prescribe the form of register and the amount of fees. Report of the change, if of proprietary right, is to be made to the tahsíldár; non-proprietary changes are to be dealt with as the Chief Commissioner may direct[9].

§ 4.—*Provisions of the Panjáb Law.*

The Act provides that the facts above described shall be recorded[10], and leaves it to local rules to provide details[1]. The practice under the Rules is, that the patwári reports through the qánúngo to the tahsíl the death of a headman, a revenue-free grantee, or a person interested in land, including an occupancy tenant. In the first two cases the Deputy Commissioner or his Assistant passes orders, in the others the tahsíldár does, if the succession is not disputed; but if it is, reference is made to the Deputy

[7] Act XIX of 1873, section 101.

[8] Act XVII of 1876, section 56 *et seq.*

[9] Section 63. No rules have yet been issued, but it will be seen that the procedure closely resembles that of the North-West Provinces, but owing to the complication of subordinate tenures it is more intricate.

[10] Revenue Act, section 39.

[1] *Id.*, section 40 and Rules, head *E.*,—*Registration*, §§ 1-14.

Commissioner, who maintains the heirs who are in possession, and refers objectors to the Civil Court. Mutations necessitated by a decree of Court are also registered by order of the Deputy Commissioner.

Mutations arising from voluntary transfers are made before the tahsíldár, unless there is an objection, when the orders of the Deputy Commissioner are obtained. It is, however, expressly stated that the mutation, if the transferor is a minor, or under legal disability, or if the land has been hypothecated as security for a farm, or other *Government* contract, is to be refused [2].

As in the other provinces, fees are charged, and a notice for fifteen days is issued to allow of objections being made.

§ 5.—*Provisions of the Central Provinces Law.*

Here the original record may be altered after it is handed over to the District Officer, but only on one or other of the grounds specified in section 120 of the Revenue Act. The Chief Commissioner is empowered, by section 125, to direct that the village muqaddam shall prepare (or, if there is a patwári, cause to be prepared) such papers as he may prescribe, showing proprietary and other changes. All persons in possession of proprietary rights are bound to give the information necessary for the preparation of these papers.

Such changes will be recorded in such registers as may be prescribed.

As in the other provinces, persons entering into possession of proprietary rights and interests in land are bound to give notice to the tahsíldár.

A yearly enquiry is to be made [3] into revenue-free holdings, so as to see what holdings lapse and become liable to assessment, and whether the conditions on which such may be held are kept.

[2] Rules, head *E.,—Registration*, § 8. It is the rule in the Panjáb to report to the Commissioner mutations whereby an outsider acquires land in a village owned by a community. This is one of the several precautions taken to watch those changes which tend to break up the communities.

[3] Act XVIII of 1881, section 130.

(B.)—Partitions.

§ 6.—*Nature of partition cases.*

This is one of the ways in which proprietary changes occur. The chapter on tenures will have informed the student that in some cases the village-owners enjoy the estate in common, pay the whole proceeds into a common stock, and then, after discharging the revenue, cesses, and village expenses, distribute the profits according to ancestral or other recognised shares. But besides this, the whole body is jointly liable to Government for the revenue. There may be a partition, therefore, which affects the private joint interest; there may also be one which affects the joint liability also. The partition is called (in legal language) "perfect" when the *joint* responsibility to Government is dissolved, and a number of new mahâls or separate estates, each with its own liability, is thereby created. "Imperfect" partition is when—without touching the joint responsibility to Government—the shares and liabilities of the shareholders as between themselves are declared, and the lands divided off on the ground to each sharer[4]. In the section on North-West Tenures, I have alluded to the causes which caused the original family to split up, first into "pattís," and then perhaps further, *viz*, each pattí into smaller lots, or even into individual holdings. Partition may therefore be applied for (*a*) to separate the "pattís" only, leaving the holders of each pattí still united; and (*b*) to separate the individual holdings, which may be either "perfectly" (with separate revenue responsibility) or "imperfectly." There is a Partition Act (XIX of 1863) which has been superseded in the North-West Provinces and Oudh by the later Revenue Acts, and was not ever in force in the Panjáb. It is therefore only kept in the Central Provinces, in which the framers of the Revenue Act did not think it right to include any rules about partition, except such as might affect the revenue responsibility.

[4] In some of the text-books the native term "batwára" is confined to the perfect partition, but in common parlance it is not so. In the Panjáb, for example, where perfect partition is not, as a rule, allowed, the term "batwára" is constantly used for a mere division of estate.

§ 7.—*Partition Law in the North-West Provinces.*

In these provinces the whole subject of partition is dealt with in the Revenue Act. No objection is entertained, on principle, to either kind of partition [5]. That is to say, Government does not, as in the Panjáb, attempt to prevent the community dissolving its joint revenue liability by a perfect partition. It is competent, however, to any co-sharer to object to perfect partition, and the revenue authorities may adjudge the matter and refuse partition [6]. Imperfect partition cannot be granted unless all the recorded sharers agree to it. If there is a dispute about the correctness of the recorded shares [7], or other question of right, this must be first decided by a Civil Court, and the partition be refused pending such a decision, or the Revenue-officer may enquire into and decide the matter himself under the procedure laid down in the Act.

§ 8.—*Partition Law in Oudh.*

Chapter V of the Revenue Act is devoted to the subject, and Act XIX of 1863 was repealed [8] for the same reason as in the North-West Provinces. The provisions are exactly the same as in the North-West Provinces, except that the Act does not require the assent of all the co-sharers to an imperfect partition. The Circular Orders, however, show a disposition to defer perfect partition, if the people can be persuaded to agree to accept an imperfect partition instead [9].

§ 9.—*Law of the Panjáb.*

In this province Act XIX of 1863 is not in force. A very decided objection, on public grounds, is entertained to a perfect partition; it is thought that, if allowed generally, it would be the

[5] Revenue Act, section 108.

[6] Section 112. Partition is (in this and in all the Acts) one of the subjects over which Civil Courts have no jurisdiction (see section 135 : so in Panjáb Act, section 65).

[7] Section 134.

[8] See Oudh Laws Act XVIII of 1876, Schedule I.

[9] Which it often really is. The definition of shares is what is really needed if a family disagree; the separation of the rarely enforced joint responsibility is very exceptionally of real importance to them. See Circular 21 of 1878.

signal for the break-up of the communities, and this would destroy the power of internal self-government according to ancient and familiar custom, which is one of the best features of the system.

The Revenue Act says nothing on the subject beyond barring the jurisdiction of the Civil Courts in such matters. It is consequently dealt with by rules under the general powers given in section 66[10].

As regards imperfect partition, any member of a community may apply to have his share separated off, irrespective of the consent of the others, provided there is no dispute about the accuracy of the record as regards who are the sharers.

Perfect partition may be made only *at settlement* (provided the sanction of the Financial Commissioner is obtained, if it is not the first regular settlement), but only on the written application of a sharer, or one who holds a decree and is executing it.

Even then (as in Oudh) the Settlement Officer is to explain the matter to the people and ascertain if a division of land without dissolving the communal bond will not suffice to meet what they really want.

§ 10.—*Law of the Central Provinces.*

The Partition Act (IX of 1863) is in force. Both forms of partition are recognised. The simple separation of holdings (called *khetbat*) is effected under the superintendence of the tahsíldár, subject to sanction of the District Officer. The Revenue Act has not dealt with the subject, except so far as it affects the question of revenue responsibility. A *Revenue* Act, it was held, has nothing to do with questions of partition of property as between the owners, which have no effect on the Government revenue, or the liability for it. This is, no doubt, the logical view. The 136th section of the Act allows perfect partition or separation of the revenue responsibility, as well as of the holding, on application to the Deputy Commissioner. But the creation of a new mahál must

[10] Rules, head *E,—Registration*, Chapter II, §§ 1—11, for imperfect, and Chapter III, §§ 1-29, for perfect partition.

be when the lands are separately held, and when the málguzárs, applying for separation, are not also co-sharers in other lands in the mahál, besides having their several holdings which they wish to separate.

(C.)—MINOR[1] SETTLEMENTS NECESSITATED BY LAPSE OF GRANTS, RIVER ACTION, &c.

§ 11.—*Lapses of revenue-free grants.*

Changes in the settlement arrangements have also to be provided for; they arise chiefly by the lapse or resumption of mu'áfis or jágírs (revenue-free grants). Many of these are granted only for a term, or for life, or are held conditionally. When the term or the life expires, or the conditions are not fulfilled, the grant may lapse, and then the land has to pay revenue. This involves the sanction of superior authority (1) to the fact of the lapse, in case it depends on a question whether it ought to lapse or not; (2) to the revenue to be in future assessed on it; (3) in case the grantee is not owner of the land, as to the person who is to be settled with. For the purposes of this Manual it is only necessary to indicate, not to give details regarding, this subject[2].

§ 12.—*Alluvion assessments.*

I have already alluded to the way in which, at settlement, lands liable to be washed away or added to by the action of rivers are dealt with, whether formed into separate "chaks," liable to be resettled after short periods, or left as part of the estate at large, but requiring an alteration of the assessment when assets as a whole are affected beyond a certain limit. The Collector has to provide for the inspection of the lands, either annually or

[1] Called "Summary Settlements" in the North-Western Provinces; but this term has quite another meaning in the Panjáb, where it refers to the temporary arrangements in districts before a regular settlement was introduced.

[2] For details of practice the Acts, the Revenue Rules, and the Provincial Revenue Circulars must be consulted. It would exceed the limits of the work to give them in the text. Half-yearly returns of "lapses" are usually required. Sometimes when such grants are held by several sharers, local rules have to be applied as to whether the *share* lapses to Government or the survivors absorb it.

when the period for alluvion and diluvion settlement comes round, or when a specially heavy river action has produced extraordinary effects, as the case may be. The checking of the measurements made by the patwári, and the inspection of the lands with a view to assessing them, or to seeing whether the estate assets are increased or diminished at the beginning of the cold season (when the river has subsided to its normal limits), is one of the instructive duties of the District Assistants who submit their reports to the Collector (or Deputy Commissioner). The latter ultimately proposes an assessment for the sanction of the chief revenue authority.

(D.)—Maintenance of boundaries.

§ 13.—*Legal provisions for repair of marks.*

The settlement proceedings, as we have seen, could not be carried out, if all boundaries were not in the first instance settled and proper marks set up. But it is of hardly less importance that these should *continue* in a state of repair. A Forest Officer will often find this a matter which comes practically under his notice, as the estate under his charge may be immediately contiguous to a revenue-paying estate.

All boundary disputes[3] are to be decided on the basis of possession, or, in some Acts, by arbitration with the consent of the parties; and an order may be given to maintain the marks as they are till the dispute is lawfully adjudicated. Obviously, it is the duty of persons disputing a boundary to go to Court and get the question settled—not in the heat of excitement to try and take the law into their own hands and destroy existing marks.

§ 14.—*Law of the North-West Provinces and Oudh.*

The Revenue Act,[4] gives power to the Collector to *maintain* boundary marks. Owners are responsible for their maintenance,

[3] We are always now speaking of disputes arising *after* the Revenue Settlement is over.

[4] Sections 140-45.

and persons erasing or damaging marks may be made to pay for the damage [5]. When the author of the mischief cannot be discovered, the Collector has power to determine who shall pay for the restoration.

The Oudh Act [6] contains precisely similar provisions.

§ 15.—*Law of the Panjáb.*

The subject of the maintenance of boundary marks is not separately treated, but the same section of the Act [7] which gives power to the Settlement Officer to have the boundaries erected, also gives power for their subsequent maintenance. Rules under the Act also deal briefly with this subject. No penalty is provided, but only the cost of restoration can be recovered. Any penalty has to be sought by a prosecution under the Penal Code.

§ 16.—*Law of the Central Provinces.*

The Act [8] provides a fine for damaging or destroying marks and for rewarding the informer, as well as for paying the cost of restoration. All landed proprietors and mortgagees are bound to keep up the boundary marks [9].

The Act is entirely silent about boundary disputes, except those occurring at the time of settlement demarcation. All such cases consequently go to the Civil Court.

(*E*).—THE COLLECTION OF THE LAND-REVENUE.

§ 17.—*The agricultural year.*

Before I can proceed to the subject of the following paragraphs, I must have to explain what is meant by the "agricultural year."

[5] Irrespective of course of any criminal penalty that they may be liable to under the Penal Code, section 434, &c.

[6] Sections 102–107.

[7] Section 23.

[8] Sections 134-35.

[9] This appears clearly from section 45, and also section 135. It was in the original drafts of the Revenue Bills specifically stated in clause 155, but this has disappeared as unnecessary from the Act as passed.

For various questions regarding the enhancement of rents, the time of ejectment of tenants, and so forth, it is necessary to fix when the agricultural year begins. It is obvious that this must vary according to the seasons and climate of each province. And the Revenue and Rent Laws either state the date of beginning and ending, or leave it to the Local Government to define it.

It would be hard that a tenant should be turned out, just as he had ploughed or sown his land; it would be equally hard that a tenant should be able to relinquish at such a seasont hat the owner could not have time to make any other arrangement for cultivating the fields. Hence the necessity for fixing the beginning and ending of the year for agricultural purposes.

In the North-West Provinces and Oudh it begins on the 1st July and ends on the 30th June[10].

The Panjáb Revenue Act does not mention the subject. For certain purposes of the Tenancy Act (XXVIII of 1868), the agricultural year has been notified to begin on the 15th June[1].

In the same way, the Central Provinces Revenue Act does not mention the subject. In the Tenancy Bill (not yet passed) the year is provided to begin on the 1st June.

§ 18.—*Payment of the revenue.*

The land revenue is made payable, not in one lump sum for the whole year, but in certain instalments ("kist") arranged according to the two principal harvests,—spring (rabi') and autumn (kharíf)—and usually so timed as to allow of crops being sold, and rents in money gathered in, so that the revenue-payers may be in a position to pay with punctuality.

These conditions may, in the North-West Provinces, be regulated by rules made by the Board[2], in Oudh by the Chief Com-

[10] Act XIX of 1873, section 2 (definitions). Also Rent Act, section 196(o), and Act XVII of 1876, section 2 (definitions).

[1] See also sections 21–24 of the Act, as to ejectment dates.

[2] Section 147. The rules will be found in S. B. Cir. Dep. III, page 9. Panjáb Land Revenue Rules, F., Chapter I.

missioner[3], and in the Panjáb[4] by the Local Government. In some cases the Settlement Officer determines at the time of settlement when the instalments are to be paid.

In the Central Provinces the Chief Commissioner may fix the number of instalments, and the time, place, and manner of payment. This he may do notwithstanding anything put down in the settlement record[5].

Revenue is in all provinces paid into the tahsíl, unless a man gets express permission to pay it into the "sadr," or Collector's head-quarters, direct.

The tahsildár keeps up a "kistbandi" or register showing the revenue payments, and when the instalments fall due.

§ 19.—*Recovery of arrears.*

The important question concerning the land revenue is its recovery, when not voluntarily paid on its falling due. A sum not paid at the proper time and place is in *arrear*, and the person failing to pay is a *defaulter*[6].

I may here remark that the Revenue Manuals are usually full of cautions as to the exercise of powers for the recovery of revenue; nor is this unnecessary. Why does not a man pay? Either because he *will* not, *i.e.*, he is negligent, careless, ought to be able to pay, &c., or he *cannot;* famine, drought, or some other calamity has reduced him, or his assessment is really too heavy. Native officers are prone to attribute the failure to "sharárat wa nadahindagi" (wicked refusal and contumacy). But the Collector must discriminate. If there is reason to suppose that there is misfortune rather than fault, he can *suspend* the demand, and ultimately

[3] Oudh Act, section 109.
[4] Panjáb Act, section 42.
[5] Act, section 90.
[6] North-West Provinces Act, section 147; Oudh Act, section 111; Panjáb Act, section 42; which latter adds that it must be paid before sunset on the day fixed. Central Provinces Act, section 91.

recommend it for *remission* under the rules in force in his province. I do not propose to deal with these matters in detail.

Interest is not demanded on arrears of revenue [7].

§ 20.—*When the arrear is disputed.*

The Acts recognise that a certificate of the tahsíldár is sufficient evidence of the arrear being due. But a person can pay "under protest," and then is allowed to bring a civil suit on the subject.

The Panjáb Act says nothing about proof of arrear; but only allows the fact to be contested by a suit (not after payment, but after finding security), so long as the milder processes of recovery (arrest and imprisonment in civil jail, &c.) mentioned in section 43 of the Act are going on.

But supposing that *legal process* has to be resorted to, that process is as follows:—

§ 21.—*Processes of recovery: North-West Provinces.*

The procedure is sufficiently described in the 150th section of the Act, which is as follows [8]:—

"An arrear of revenue may be recovered by the following processes:—

"(*a*) by serving a writ of demand (dastak) on any of the defaulters;

"(*b*) by arrest and detention of his person;

"(*c*) by distress and sale of his movable property;

"(*d*) by attachment of the share, or patti, or mahál in respect of which the arrear is due;

"(*e*) by transfer of such share or patti to a solvent co-sharer in the mahál;

"(*f*) by annulment of the settlement of such pattí or of the whole mahál;

"(*g*) by sale of such pattí or of the whole mahál;

"(*h*) by sale of other immovable property of the defaulter."

[7] North-West Provinces Act, section 148; Oudh Act, section 111; not alluded to in the Panjáb Act; Central Provinces Act, section 119; conditional, however, on the Chief Commissioner's *not ordering* it: interest may be awarded on revenue due under a sub-settlement, because non-payment then does not only affect Government but the superior proprietor.

[8] North-West Provinces Act (XIX, 1873), sections 149 and 189; Panjáb Act (XXXIII, 1871), sections 43-44; Oudh Act (XVII, 1876), sections 113 and 156; Central Provinces Act (XVIII, 1881), sections 92 and 114.

Under the first process, simple detention may last for fifteen days if the arrear (with costs) is not sooner paid[9].

Whether arrest has taken place or not, *movable* property (excepting implements of husbandry and cattle or tools of an artisan) may be sold[10].

In addition to, or instead of, this process, the estate or share in it may be attached and managed by a Government agent, or the Collector may *transfer* the defaulting estate or the defaulting share (or pattí) for a term not exceeding fifteen years, to a solvent co-sharer, or to the body of the co-sharers[1].

Another remedy is to annul the settlement, and take the estate under direct management, or farm it out. In this case, as also in the milder process of management without annulling the settlement just alluded to, a proclamation is made, and no one can pay rent or any other due on account of the estate to the defaulter, but to the Collector: if he does so pay, he gets no credit for it[2]. If a part of an estate only is affected by an order of annulment of settlement, the joint responsibility is dissolved as between such part of the estate and the rest. If the Collector thinks that these processes are not sufficient to recover the arrears, he may in addition to (*i.e.*, after trying them), or instead of all or any of, them, sell, subject to the Board's sanction, the pattí or the estate by auction: the sale must be for arrears that had accrued before, and not during the time of its being held under management, as one of the processes for recovery of arrears.

The land is sold free of all incumbrances, except certain specified ones, for which the Act may be consulted[3].

Last of all, if the arrear cannot be recovered, immovable property *other* than that on which the arrear accrued may be sold,

[9] Section 152.

[10] Section 153.

[1] Section 157.

[2] Section 161. The annulment of settlement is applied when other processes are not sufficient, and requires special sanction.

[3] Section 167.

but sold *with* its incumbrances[4]. The procedure for conducting sales is given in the Act, and need not here be detailed.

§ 22.—*Law of the other provinces.*

The procedure in Oudh is practically the same[5].

The Panjáb law[6] is also drawn on the same lines.

The Central Provinces Act devotes Chapter VIII to revenue collection. The compulsory processes are practically the same as in the other Acts. There are some provisos as to the application of the different processes, for which the Act must be referred to.

When land is sold in satisfaction of arrears, it is sold clear of all incumbrances; but this is subject to some exceptions. They chiefly relate to saving the *other* proprietary or under-proprietary titles, when either the upper or under title is put up for sale[7].

Whenever land is sold, the Acts all recognise that the former owner shall remain on his own holding (or sír) as occupancy tenant of it.

The differences in detail of the provisions in each province must be ascertained, if there is practical need, by consulting the proper Act. I do not consider it necessary to do more than describe the general conditions and purposes, which are the same in all.

§ 23.—*These provisions are applicable to recovery of other Government demands.*

It may be important to public officers generally to be aware of these provisions, as public revenue is very generally recoverable

[4] Section 168. It is only the land itself that is held hypothecated, so that when incumbrances are created on it, they are so in full knowledge of the Government's prior lien. This is of course not so in the case of other lands.

[5] Revenue Act, sections 108-85. But taluqdárs and female proprietors are not liable to arrest and imprisonment.

[6] Revenue Act, Chapter V. There are some differences to be noted.

[7] The Act appears to omit the first process of the other Acts—the issue of the "dastak" or warrant; and logically so, for the dastak is a demand for payment, not a compulsory process, except so far as the levy of its cost acts as a compulsion. Section 95 provides for the preliminary process practically, by saying that the process of imprisonment may be carried out by the issue of a warrant, *conditional* that if the money *is not paid*, then the arrest and imprisonment are to take effect.

under them;—for example, the Forest Act (VII of 1878) provides[8] that money payable under the Act, or rules made pursuant to it, or on account of the price of any forest produce, or expenses incurred in the execution of the Act, may be recovered "as if it were an arrear of land revenue."

§ 24.—*Recovery of arrears under a sub-settlement.*

When the inferior proprietor is responsible under a sub-settlement with Government for the revenue, the Oudh and Central Provinces Acts[9] regard the revenue as recoverable just in the same way as it is under a settlement. The lambardárs pay up the revenue of the sharers whom they represent in the first instance, and consequently need to be armed with powers of recovering revenue payments from the individuals on whose behalf they have paid. In the provinces where cases of double tenure are rare (North-Western Provinces and the Panjáb), the superior proprietor recovers from the inferior by a suit. In the Central Provinces and Oudh, where whole villages show the double tenure, and where some more ready arrangement for recovery of money due under sub-settlement, or due from an inferior proprietor not holding a sub-settlement, is necessary, special provisions are contained in the Acts. Not only may any lambardár (or sub-lambardár), or any one to whom an arrear is due

[8] And apart from these specific provisions, the *Panjáb* Land Revenue Act states generally that the Deputy Commissioner may exercise all or any of the powers provided for the recovery of land revenue, for the recovery of *any other revenue* due from any person to Government. The only question then is, whether the particular sum sought to be recovered can be called "revenue due to Government." None of the other Acts contain such a general provision. It is, indeed, hardly necessary, as Acts dealing with special subjects always contain such a provision where it is necessary.

[9] Oudh Act (XVII, 1876), section 103 *et seq.*; Central Provinces Act, section 91 *et seq.* The Central Provinces Act regards arrears under a sub-settlement on the same terms as it does money due on a settlement, and there are the same facilities for recovering it (sections 115-16.) The same thing practically results from the Oudh Act, which by section 158 gives power to the proprietor to apply to the Deputy Commissioner to realise the arrear under a sub-settlement by the ordinary revenue procedure.

under a sub-settlement, apply to the District Officer to recover the arrear as if it were an arrear of Government revenue, but if a suit is brought, the Central Provinces Act (section 115) facilitates the suit, by not allowing any ordinary debt to be "set-off" against the revenue claim, nor any payment alleged to have been paid on account, which is paid before the revenue instalments in question fall due.

(*F.*) Rent cases.

§ 25.—*Constitution of Courts.*

By the Acts of the North-Western Provinces and Oudh, the hearing of suits and applications for rent, for ejectment of tenants, for enhancement of rent, and for other matters connected with tenants, is entrusted to Revenue-officers sitting as Revenue Courts. The "Tenancy" Act of the Panjáb (XXVIII of 1868), on the other hand, makes the Civil Courts hear these cases, but refers to the Revenue-officers certain matters not being regular *suits* in Court, though connected with rent arrangements.

The Central Provinces Bill has provisions regarding the Courts closely resembling those of the Panjáb Act, but the Judge of the Civil Court hearing rent suits must have had Revenue experience before he can be appointed to the duty.

Each Act provides for its own procedure and its rules of appeal[10].

The following extract from the North-Western Provinces Rent Act (Chapter V)—(*a*) as regards suits, (*b*) as regards miscellaneous applications—will sufficiently indicate the matters which the Revenue Courts hear. The other Acts have, of course, their own specific provisions on the subject, but this lately drafted and complete law of 1881 will serve as a specimen, and will sufficiently indicate to the student what, as a matter of practice, the cases are, which

[10] North-Western Provinces Act (XII of 1881), Chapters VI-VIII; Oudh Act (XIX of 1868), Chapters VII-IX; Panjáb Act (XXVIII of 1868), Chapter VII; Central Provinces Act (not yet passed), Chapter VI of the Bill.

I am referring to. It will be remembered, however, that the Panjáb and Central Provinces divide the jurisdiction, as just now stated.

The *suits* cognisable by Revenue Courts only are—

(*a*) suits for arrears of rent, or, where rent is payable in kind, for the money-equivalent of rent, on account of land or on account of any rights of pasturage, forest-rights, fisheries, or the like;

(*b*) suits to eject a tenant for any act or omission detrimental to the land in his occupation or inconsistent with the purpose for which the land was let;

(*c*) suits to cancel a lease for the breach of any condition binding on the tenant, and which, by law, custom, or special agreement, involves the forfeiture of the lease;

(*cc*) suits for compensation for, or to prohibit, any act, omission, or breach mentioned in clause (*b*) or clause (*c*);

(*d*) suits for the recovery of any over-payment of rent, or for compensation under section 48 or 49;

(*e*) suits for compensation for withholding receipt for rent paid;

(*f*) suits for contesting the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in the exercise of the said power, or for compensation for wrongful acts or omissions of a distrainer;

(*g*) suits by lambardárs for arrears of Government revenue payable through them by the co-sharers whom they represent, and for village-expenses and other dues for which the co-sharers may be responsible to the lambardár;

(*h*) suits by recorded co-sharers for their recorded share of the profits of a mahál, or any part thereof, after payment of the Government revenue and village expenses, or for a settlement of accounts;

(*i*) suits by muá'fidárs, or assignees of the Government revenue, for arrears of revenue due to them as such;

(*k*) suits by taluqdárs and other superior proprietors for arrears of revenue due to them as such;

(*l*) suits by recorded co-sharers to recover from a recorded co-sharer who defaults arrears of revenue paid by them on his account.

The *applications* cognisable by Revenue Courts only are the following:—

(*a*) application to determine the nature and class of a tenant's tenure, under section 10;

(*b*) application by a landholder, or his agent, to compel a patwári to produce his accounts relating to land;

(*c*) application to resume rent-free grants under section 30, or to assess to rent land previously held rent-free;

(*d*) application from a landholder to eject a tenant under section 35, or to have a notice of ejectment issued and served under section 38 ;

(*e*) applications made by a tenant, under section 39 ;

(*f*) application from a landholder, under section 40, for assistance to eject a tenant ;

(*g*) application from a tenant or landholder to determine the value of any standing crop, or ungathered products of the earth, belonging to the tenant and being on the land at the time of his ejectment, under section 42 ;

(*h*) application by a landholder to determine rent payable for land used by a tenant for the purpose of tending or gathering in the crop, under section 42 ;

(*i*) application by a landholder or tenant for assistance in the division or appraisement of a standing crop, under section 43 ;

(*j*) application by a landholder or tenant to determine compensation for improvements of land ;

(*k*) application by a tenant for leave to deposit rent ;

(*l*) application for enhancement or determination of rent ;

(*m*) application for compensation for wrongful dispossession ;

(*n*) application for the recovery of the occupancy of any land of which a tenant has been wrongfully dispossessed ;

(*o*) application for abatement of rent ;

(*p*) application for leases or counterparts, and for the determination of the rates of rent at which such leases or counterparts are to be delivered ;

(*q*) application, under section 7, to have the holding of an ex-proprietary tenant divided off ;

(*r*) application, under section 22A, to survey land ;

(*s*) application, under section 33A, to have a notice of relinquishment declared invalid ;

(*t*) application to take out of deposit any amount deposited, under section 55A.

NOTE A.

Extra Regulation (or "Scheduled") Districts in the North-Western Provinces.

The scheduled districts calling for a brief special account are—(1) Kumáon, (2) Jaunsar-Báwar, (3) the Tarái District, (4) South Mirzapur.

South Mirzapur.

The southern portion of Mirzapur requires a very short notice, so I may take it first.

The notifications declaring this a scheduled district were issued by the Government of India, No. 636, dated 30th May 1879; and the Local Government, No. 63A., dated 14th July 1879.

The Civil Procedure Code is in force, but there is a special organisation of Courts, the Commissioner being the Court of final appeal.

In revenue cases there is power to refer (exercisable by the Local Government) to the Board of Revenue, when the Commissioner reverses the decision of the Collector.

The revenue rules are special. The settlement is made for ten years.

The system of village settlement is not in force, for here the villages were, like those in the Central Provinces, mere groups of cultivators under management of a village headman. In this sparsely cultivated tract, the Settlement Officers, however, rarely, or never, found the village headman, or "sipurd-dár," in such a position that they could reasonably call him "proprietor" of the village, and make him responsible for the revenue.

In a few villages indeed (in the maháls or estates of Gonda, Bajia, and Hira-chak) the sipurd-dár was recognised as the "zamíndár" or proprietor, so these are zamíndárí villages, and as regards them the ordinary revenue law is in force. But in the other

villages the proprietary right is held to vest in Government, and the actual holder of land is deemed the permanent "occupant," with a heritable, but not transferable, right in—

(a) his house, premises, or site in the village;
(b) his fields which are or can be permanently cultivated;
(c) any grove or garden which he planted by permission of the Collector or officer in local charge. Trees in such groves may be sold or mortgaged.

The right of occupancy mentioned under (b), *viz.*, that recognised in permanently cultivated land, is acquired after three years' holding. Every occupant receives a patta, or written document showing the terms of holding, and the patta contains a clause allowing the tenant to break up a certain area of available waste. He maintains his right so long as he makes regular payment of rent. If he was already on the land at settlement, the rent is the settlement rate of assessment; if he entered afterwards, it is what he has agreed to pay.

Other lands not occupied on these terms are held as simple tenancies-at-will from the State.

The whole village is managed by a headman, or sipurd-dár. The office was recognised at settlement in some cases as hereditary, but not always; and it is not transferable.

The sipurd-dár collects the rents, being allowed a deduction for the rent of the "sír," or land of which he is the occupant, and from 20 to 30 per cent. on the collection, as a remuneration for his risk and trouble.

He can locate cultivators on the waste, but he is bound to respect the amount of waste that is granted in each occupant's "patta;" nor can he eject occupants, as he can the tenants on lands not held by occupants.

The rents are recoverable by "dastak" or writ of demand, or by distraint of property; and if this fail, the Collector may order sale of the property.

In the last resort a defaulting occupant may be ejected from his holding.

A Government "sazáwal" supervises the sipurd-dárs in the "zamíndárí" estates. Where the sipurd-dár is recognised as proprietor of the village, the sazáwal becomes the tahsíldár.

Kumáon and Garhwál.

§ 1.—*The Administration.*

The criminal law and procedure does not differ from what it is elsewhere, but the "Rules for the Administration of Justice" issued under section 6 of the Scheduled Districts Act, determine the powers of Courts and Magistrates, the Commissioner being the *Court of Session*, the Senior Assistant being the *Magistrate of the District.*

The Civil Courts are also governed, as regards procedure, by the Rules[1]. But there is little regarding the substantive law that is exceptional.

Parts of the Revenue Act relating to the settlements and to the recovery of arrears of revenue are in force, but not the Rent Act. There are Revenue Courts—"Summary and Regular"—just the same as in the Tarái.

A number of other Acts have been extended to and are declared in force in the District, by notification.

The Senior Assistant is the Collector, and the Junior and Extra Assistants are the Assistant Collectors[2]. The tahsíldárs have powers as elsewhere.

§ 2.—*The Settlements.*

The present settlement was begun in 1863. Dealing with a country consisting of mountains and deep valleys, the procedure of survey was different from what it would be in a plain district.

The cultivation of a permanent character is confined to the valleys where some alluvial soil has accumulated, and to such of the

[1] But the portions of the Civil Procedure Code not touching the Rules are in force (Notification, North-West Provinces, No. 566A., 5th December 1876).

[2] Rules, Chapter III, 1.

hill sides as have good enough soil to make it worth while to terrace them. There is also some casual cultivation (ijrán),—that is, land that is broken up and cultivated only for a time; when the soil is exhausted, the plot is abandoned. The survey maps, therefore, show the villages, and not the intervening waste[3]. There was no general demarcation of village boundaries (for this was unnecessary under such circumstances), but boundaries were determined (1) when disputed, (2) when adjoining Government forest, or (3) when the area was adjusted by cutting off an excessive amount of waste. In this operation there was nothing previously on record to help the Settlement Officer. At the early settlements there had been no measurement. In 1823 a "guess measurement" had been made, and a *description* of the boundaries recorded, and at the next settlement of 1846, also, no measurement had been made, but a "fard phánt," a sort of list of sharers, tenants and rents, was made out showing holdings: that was all.

Only at the last settlement (now current) was a survey made. The measurements of the khasra survey were recorded in "vísis" of 4,800 square yards (40 square yards less than an acre).

§ 3.—*Right to Waste Land.*

Allusion must here be made to the waste, as included in village boundaries[4]. It would appear that in many cases the jungle or grazing land was, in Mr. Traill's early settlements, included in the nominal boundaries of villages: that is, it is known by the same name; but it does not follow that it belongs, in any proprietary sense, to the village.

General Sir H. Ramsay quotes with approval[5] a passage from

[3] Board's Review of the Kumáon Settlement Report.

[4] Some misunderstanding may arise in the original Report from the fact that in some of the statements "waste" is used to mean simply *fallow* land. I speak here of *waste* or *jungle* land.

[5] Settlement Report, page 24. The reader who remembers how the original organisation of small Hindu States dealt with the waste, and how those ancient institutions survive in the hills, will be disposed to think that this extract is evidently, in theory at any rate, correct. Private right did not arise except on the ground of clearing and possessing the soil; and there are no communities or grantees to claim the entire lordship over an entire area of land, waste or tilled.

Mr. Batten's Garhwál Report, in which he says—"I take this opportunity of asserting that the right of Government to use forest and waste lands not included in the assessable area of the estate, remains utterly unaffected by the inclusion of certain tracts within the boundaries of mauzas." No one has a right, merely on the ground of such inclusion, to demand payment for grazing or wood-cutting from other villages. Nor does such inclusion of itself interfere with the Government right to offer clearing leases in such waste. Mr. Batten thought, however, that the inhabitants of the village should[6] have the first refusal of such leases, and that grants should not be made so as to bring them up too close to the village (*i.e.*, that a space for grazing and wood-cutting should be left).

General Ramsay's own account slightly differs from this. While admitting the Government right[7], he says that the villages have a prescriptive right to grass, grazing, timber, and firewood, and even to grazing dues from outsiders who feed their cattle in the grazing lands within the village boundaries. All that the landowners can claim outside their cultivation, is a fair amount of culturable waste, with a sufficient amount of waste for grazing and wood-cutting.

In paragraph 48, again, he says that the people "owned their jungle in a way" before we came; and so when we recognised their proprietary right in the cultivated land, the people acquired a "*certain right to the use of the forest*[8]."

§ 4.—*Revenue assessment.*

The revenue assessment was made on a principle which it is not

[6] Clearly as a matter of convenience and policy.

[7] Report, section 40.

[8] I make no comment on this; I simply note the statements as they are, leaving it to be gathered by a true interpretation of the facts, what the real claim of the villagers on the waste amounts to. It is, however, certain that under the old Hindu constitution of society, while no landholder claimed a heritable right in any soil beyond his own holding, rights of user, or what were practically such, existed, to grazing and wood-cutting in the neighbouring waste.

easy to understand; it was arrived at by calculations made on the basis of certain rates for average land, and modifying the results by consideration of the abundance or absence of population, which made cultivation easier or more difficult. It is not necessary for the purposes of this book that the process should be detailed.

§ 5.—*Rights in land.*

The record of rights, again, was a matter of some difficulty.

Under the Gorkhá Government the Rája was, as usual, regarded as the general landowner, and he made grants of land, and not unfrequently put grantees on already occupied lands, nominally that they might realise the State share, though in practice they took much more and behaved as if they were landlords in our sense of the term. Villages were given to astrologers, cooks, barbers, and physicians; and the people in possession, whatever they once were, soon came to be looked on as the tenants of the new grantees[9].

The headman of a village was the "pradhán," and over several villages was a "thokdár" or "siyána," who managed police matters and collected the revenue.

At first the British authorities took their revenue in the same way, but later Mr. Traill (the then Commissioner) made a settlement which is described as "mauzawár," or by villages; and this was understood to give the proprietary right to those who appeared in the superior position, either from being grantees of the Gorkhás or as original occupants who had not been interfered with by such grants. The people, as might be expected, had a customary distinction of rights of their own; and names distinguishing what we may call proprietorship and tenancy, are locally known. As the country grew in wealth, these distinctions were acted on and revived by the more advanced; and when Mr. Batten made a twenty years' settlement in 1846, he found the people very ready to claim the superior position on their own account; he, however, left every

[9] Board of Revenue's Review of the Settlement Report, para. 22.

one to get a decree of the Revenue Court defining the position he was to occupy in one class or another. When the present settlement began, every one wished to be recorded proprietor [10].

The actual state of landed tenures in Kumáon is, as might be expected, much more approximate to the old Hindu custom; there are no village landlords. It is not surprising that in 1846 Mr. Batten, influenced by the system under which he had been trained, made use of terms which belong only to the North-Western Provinces villages and are stereotyped in the "Directions;" but the present Commissioner [1] confirms the fact (which might have been otherwise expected) that there is no such thing really as a "zamíndárí" tenure, *i.e.*, where one individual or a common body is landlord of the whole estate.

All cultivators are really equally proprietors of their holdings; but there were cases where a grantee had been, as above remarked, constituted proprietor over the heads of the original cultivators; there were other cases, also, where an energetic pradhán or a "thokdár" had succeeded in acquiring a sort of superiority over the cultivators: in some cases, he would have had a real superiority, having been the leader and the first to commence the work of clearing and cultivation. In such cases these persons *were recorded as the owners*, and the original cultivators (who would otherwise have been proprietors) then, as in so many other settlements, fell into the position of "kháikárs," or permanent tenants, with privileges, however, little inferior to those of owners.

§ 6.—*Landlord and tenant.*

The right in land is called "thhát," and the proprietors "thhátwán:" the term "zamíndár" has no meaning, except its literal one—"any one connected with land [2]."

[10] Report, para. 25, page 14.

[1] *Id.*, page 15.

[2] Atkinson's Kumáon Gazetteer, § 33. Mr. Atkinson also says that the paramount property in the soil was vested in the State, and that the landholder's right, though heritable and transferable, has never been held to be indefeasible. Under an arbitrary Government no right is *indefeasible;* but the occupier of lands was *practically* an owner and was never ejected.

The superior or landlord right recognised, as just now described, in favour of the Gorkha grantees and others, does not affect a very large proportion of the villages. In many—I believe in the large majority of cases—the small proprietors cultivating their own lands have retained their position as owners. Where the existence of the superior title caused the cultivators to be recorded as "kháikár," the chief, if not the only, difference was this—the latter does not possess the right of transfer and has to pay a fixed sum as "málikána" to the proprietor; this "málikána" being the result of converting various cesses and perquisites levied under the former system into a fixed cash payment[3].

The kháikár (tenants) also have headmen (in their "stratum" of right) called "gharpradhán;" and when the landlord is non-resident, the "gharpradháns" manage the village[4].

The kháikárs thus form a class of "occupancy-tenants" on a natural tenure, and no others are known. No Rent Act has ever been in force; hence there is no artificial or legal tenant-right based on holding for a period of years.

Labourers called in to help are "sirtháns," who are only tenants-at-will: it may happen that a kháikár of one village will cultivate land in another village as a "sirthán."

Lands assigned to temples are spoken of as "gúnth."

The headmen are remunerated much as elsewhere, having a certain privileged "sír" holding, and a percentage of 5 per cent. for collecting the revenue.

§ 7.—*Official organisation.*

The local sub-division of Kumáon for revenue purposes is into tahsíls and parganas; the latter being again sub-divided into a number of "pattís."

The superior headmen or thokdárs, or siyánas, have now been allowed a small cash percentage[5], but they used to get certain

[3] Settlement Report, § 28.
[4] *Id.*, § 26.
[5] *Id.*, § 39.

perquisites, and perhaps a bit of land, fees being paid them on the occasion of a marriage in the village. They had also as a perquisite one leg of every goat killed by the village headmen.

The Gorkhás used to employ an official over a pargana called a "daftri," who was like our qánúngo, and had to supervise the headmen in his pargana.

The office of "qánúngo" has now been revived by the name, and there are now some five of these officials who superintend the patwáris.

The patwári of Kumáon differs greatly from the official called by the same name in the Regulation Districts. In Kumáon he is a provincial agent charged with multifarious duties, over a considerable area of country, and independent of the villages, being responsible to Government, who appointed him[6]. He has to measure land, execute Revenue Court decrees, repair district roads, find supplies for travellers, and keep the District Officer informed of what goes on.

There is no chaukidár system, and no regular police (except at the stations of Naini Tál, &c.). The "rural police" (though not organised under the Police Department) are the "pradháns" of villages, who are bound to apprehend criminals in serious cases and to report crime to the patwári. The head "thokdárs" keep a certain watch over the pradháns, and the small jealousies and local annuities that exist prevent too much collusion, and causes it soon to be known if this duty is neglected, and the system practically works well[7].

The Revenue Act is so far in force that in case arrears of revenue have to be recovered, Chapter V is applicable.

Rent is recovered by "summary suit" under the "Rules."

No partition law is in force, and only imperfect partition, guided by the spirit of the ordinary law, is allowed.

[6] Whalley's "Extra Regulation Law," note 1, page 39; and Report, para 36.
[7] Report, § 37.

THE TARÁI.

The Tarái district (included in the Kumáon Commissionership) is a scheduled district under Act XIV of 1874. It had originally been under the Regulations, and they were found unsuited to it. The administration indeed fairly broke down, the police failed, and the settlement was found to be oppressive. An Act was passed in 1861 to remove the district from the jurisdiction of the ordinary Courts, without, however, affecting the substantive law[8].

This need not, however, be further alluded to, as the district is now provided for by a Regulation (IV of 1876) under the 33 Vic., Cap. 3, and notifications have been issued showing the other laws in force and the Acts extended.

The Penal Code and Criminal Procedure Code are in force, also the Contract Law, Stamp Law, Forest Act, &c.

The civil procedure and the limitation law is guided by the Regulation, and pleaders are not admitted in Court. The Revenue Court procedure is also under the Regulation, and the Rent Act does not apply. The Land Revenue Act has been extended to the settled tracts[9].

The settlement was revised many years ago under the same procedure as that of the rest of the province. Only a portion of the district, however, is cultivated, and the greater portion of it[10] is consequently owned by Government, the cultivators being tenants.

In the estates owned by sole or joint proprietors, suits for ejectment are scarcely known[1], but are provided for by the Regulation. Arrears of revenue in these estates can be recovered under the ordinary revenue law. Suits for land are heard as regular revenue suits, and rent and other claims (filed within twelve months) are heard as summary suits.

[8] Whalley's "Extra Regulation Law" (1870), page 149.
[9] Notification of 22nd September 1876, No. 1555, *Gazette of India*.
[10] Five out of the six parganas (Whalley, page 150).
[1] Wholley, p. 150.

There are tahsildárs, but on qánúngos, and the patwáris have large circles like those in Kumáon. They are Government servants.

The administration is carried on by a Superintendent aided by an Assistant Superintendent. A special appeal lies to the Commissioner of Kumáon[2].

In revenue suits there is a limited power of appeal to the Board of Revenue.

JAUNSAR-BÁWAR.

The Jaunsar-Báwar pargana of the Dehra Dún district has never been under the Regulations. Although an Act of 1864 (since repealed and superseded by the Scheduled Districts Act) dealt with it, it merely recognised this extra regulation position, and did not create it.

Local customs are ascertained in this tract by a "dastúr-ul-'aml," or rule of custom, which was drawn up in 1851; it[3] was revised at a later settlement by Mr. Robertson, and signed in token of acknowledgment by the headmen. This "Code" could hardly be enforced as law, but it would be no doubt usefully referred to as an authoritative exposition of custom[4].

The revenue system is extremely simple. A headman called "siyána" is settled with for a fixed sum for a "khat," or group of lands. He prepares an annual "phánt-bandi," or revenue-roll, showing how every landholder is to pay his proportion of the whole.

The Superintendent has to check the action of the siyána, and see that the rent is fairly distributed, and that one is not favoured and another oppressed. This plan was, however, objected to in many quarters, and was only maintained (on sanctioning the settlement)

[2] Regulation IV of 1876, §§ 1-42.
[3] Whalley, page 197.
[4] The dastúr-ul-aml is printed at page 203 of Mr. Whalley's work.

on the ground that it would be inconvenient to revise what had been done. At a future settlement it will probably be altered.[5]

There was a rough survey and field measurement.

The chief difficulty was in connection with the "rights" claimed in the adjacent forests. The villagers only possessed their cultivated land, and could not even break up culturable waste without the permission of the district authorities[6]. But "they were allowed to use the forest in a general way," taking wood for their own use, but selling none.

There was, naturally, little practical restraint or control, till the forest rules began to be enforced, and then complaints were made. It was accordingly determined to make over certain forest tracts altogether to the villagers, and to define the Government forests, specifying what rights might be exercised in the Government forest. This is all laid down in the wájib-ul-arz of the khat or estate.

As regards local revenue officials, the organisation is very simple.

There are a number of patwáris who keep up "patwáris papers," as in other places, only in a more simple form.

The "siyánas," or headmen, are responsible for police, but there is no crime in the pargana.

As regards the law of Jaunsar-Báwar generally, the Scheduled Districts Act was applied to it by Notification (Home Department) No. 632, dated 30th May 1879. A notification of the same date (No. 633) extended the Civil Procedure Code. The Notification No. 634 gives a list of all the Acts in force, which includes all the chief general Acts on prominent subjects up to 1871[8].

The criminal law and procedure and the Forest law are as elsewhere in force.

[5] The present settlement was partly carried out by Mr. Cornwall and completed by Mr. Ross (1873-75). The settlement expires in 1884.

[6] Settlement Report, 1875, § 22.

[7] *Id.*, 1875, § 23.

[8] After 1874, of course, all Acts state whether they apply to scheduled districts or not: so the notifications declaring the law under the Act need only deal with Acts of a previous date.

NOTE B.

THE HAZÁRA SETTLEMENT (PANJÁB).

§ 1.—*The law applicable.*

For the Hazára district, which is a scheduled district, a special set of Settlement Rules have been passed under the Panjáb Frontier Regulation issued under the 33 Vic., Cap. III.[9]

§ 2.—*Record of rights.*

As regards rights, a statement was made out for every village, showing the whole of the occupants and other persons interested in the land. This was made public and discussed, and then the Settlement Officer declared who of all these he considered "proprietors" and who "tenants;" A person aggrieved might petition the Settlement Officer and get his case heard as a regular judicial suit.

A special provision was made for dealing with cases where there was a double *proprietary* tenure.

I have alluded, in the section on Panjáb tenures, to a custom of periodical redistribution of shares or holdings of land. In Hazára this custom is called "waish." If this custom was ancient (*i.e.*, before the Sikh rule), and a sharer had lost land by its being taken for public purposes, or by diluvion, the Settlement Officer might award him (under certain conditions) a plot out of the shámilát, or common land of the village; but if he had already been paid compensation by the State for the land, he must return the money to the shámilát fund before getting the land.

Rights in village sites are also provided for, but the record is only to be *primâ facie* evidence.

Pre-emption customs were recorded and followed. So also inheritance customs, either of tribes or villages, were defined, subject to certain rights of appeal.

[9] See Panjáb Code (Legislative Department), page 208, and the amending Regulation of 1874 at page 240.

Succession in the case of jágírs or revenue assignments was also defined under sanction of the Government through the chief revenue authority (the Financial Commissioner).

Rules appear also for the appointment of village headmen of lambardárs. So also for patwáris, one of whom ordinarily is found for each village.

The instalments of revenue are apportioned one to each harvest, the dates of payments being fixed by the Settlement Officer, so as to fall about one month after the principal crops are harvested.

The cesses levied in addition to the land revenue are special: one per cent. is for schools (the location of which is to be determined at the time), and a small rent and revenue-free plot is to be allowed to the schoolmaster. One per cent. is also to be levied for the relief of disease among the population of Hazára.

§ 3.—*Object of the record: exceptional finality.*

Unless (as in the case of the record of rights in the village site, for example) it is otherwise expressly provided, all records of rights, customs, liabilities, and all rules drawn up by the Settlement Officer, are, when submitted to the Commissioner and confirmed by the Financial Commissioner, to be considered as "a final settlement of all matters treated of." These cannot even be revised at future settlement, unless they relate to office-bearers and their duties, to the amount and method of paying the Government revenue, to cesses, or to proprietary rents of any description.

No suit will lie to enforce a right or usage contrary to the settlement record, except in so far that a suit may be brought to show that the record of a holding does not represent the actual award at settlement (in which case the record may be amended).

This, it will be observed, is different from the law regarding ordinary settlement records. There is, however, a general exception in favour of persons who can prove (within three years of the date of final report) that they were not in the Panjáb during settlement, and did not know what was going on.

In short, the object was in Hazára to give no ground for continuing feuds and jealousies, or to long drawn-out lawsuits and appeals. Everything that could concern anybody, landlord or tenant, was to be carefully enquired into and recorded then and there. After a cautious examination and approval of the record, it was made final and all questions settled and hopes of change rendered futile. Such a course was essential in a district inhabited chiefly by primitive and quarrelsome mountaineers.

In other respects, *i.e.*, as regards recovery of arrears, mutation of names in the record, appointment of officials, &c., the ordinary Revenue Act is in force.

§ 4.—*Tenancy.*

Tenancy is also dealt with in a special Regulation[10]. Nothing in it affects decrees of Court under which a tenant holds, or an agreement in writing, or a record of settlement in certain cases (see section 2).

Occupancy rights are only given to persons who *naturally* have such rights, the terms being copied from section 5 of the Panjáb Tenancy Act of 1868.

But there is no other ground on which right can be claimed, neither an artificial period, nor the fact of any entry in a settlement record of former times; nor could entry at the present settlement have that effect, under the general clause, unless it was an "agreement" reduced to record.

Enhancement of rent is only allowed by decree of the Civil Court, and ejectment also. I do not, however, go into details. The whole, it is remembered, is controlled by the general clause at the beginning of the Regulation, as far as it applies.

§ 5.—*Forest lands.*

The whole question of waste and forest was settled, and a special Regulation under the 33 Vic., Cap. 3, No. II of 1879, was passed

[10] Regulation III of 1873. Panjáb Code (page 225) and amending Regulation cancelling section 9, clause 2, page 242.

(superseding some earlier ones) for the management of the forests. There are certain forests reserved as permanent forests and subject to very much the same prohibitions and protections as the general Forest Law of India contains. Other forest (village forest) is under protective regulation, but not managed directly by departmental officers. Waste land, not dealt with either as reserved or village forest, may be brought under cultivation without restriction. As the country is mostly mountainous, it is prescribed that forest or turfed land *must* be kept up in all places where there is danger from landslips, falling-stones, ravines, torrents, and the like. The principle has been that, practically, the Government so far owns the waste, that at least it has a right to take up any part of it for forest purposes, but it gives up the rest freely. Moreover, as the people were in former days allowed a very extensive user, and certainly were never prevented from treating the forest *as if* it were their own, they have been allowed a certain share in the value of trees felled in reserved forest estates partly to compensate them for exclusion from the tract. Government reciprocally has a right to a part of the value of trees cut in non-reserved tracts, because the Government always asserted a right to the trees, if not to the forest itself. The principle adopted was, not to raise any theory of ownership, which it would have been impossible to settle, but to enquire practically what the villages had enjoyed, and provide for that or for its fair equivalent. The rest then remained at the disposal of the State for the maintenance of public forests.

CHAPTER IV.

Land Revenue System of Ajmer.

§ 1.—*The early history of Ajmer.*

The province of Ajmer, together with the Merwára parganas, was ceded to the British Government in 1818. Ajmer was a settled country: but the parganas of Merwára were mostly a stretch of jungle-clad hills, in which a few rude settlers had cleared patches for cultivation, but hardly possessed anything like a system of government or of customary landholding.

Ajmer is specially interesting to us, because it is the one British district in Rájputána; and it still preserves for us the features of the Rájput organisation as it appeared when the Rájputs came as conquering armies, not as an entire people immigrating and settling on the land. Originally, the Rájput rule was in much greater force, and extended over a far larger area than it now occupies; but the great kingdoms of the Rathors of Kanauj, the Solankhai in Guzarát, and the rest, were reduced by the Muhammadan power.[1] The chiefs were driven from the more open and fertile plains, and the existing Rájput States represent the remains of the dominion. These somewhat inaccessible districts to the north-east and south-west of the Aravalli hills, mark in fact the place of retreat of the tribes, and the site where they were able to hold their own to some extent,[2] in spite of many subsequent wars, both internecine and with foreign foes.

[1] The Rájput dynasty in Guzarát came to an end in the fourteenth century under Ala'-ud-dín Ghilzai.

[2] "We may describe Rájputána as the region within which the pure-blooded Rájput clans have maintained their independence under their own chieftains, and have kept together their primitive societies, ever since their principal dynasties in Northern India were cast down and swept away by the Musalmán irruptions."—Gazetteer of Rájputána, Vol. I., page 39.

Ajmer itself saw very various fortunes. In the fifteenth century it passed into the hands of the rulers of Málwa. During the first quarter of the sixteenth century, however, the Rájput power revived under Rána Sanga of Udaipur, but it again declined as the empire of Húmáyún and Akbar grew and consolidated. Ajmer became a "Súbah" or province of the empire, and the city itself was an imperial residence. But the Rájput customs were not obliterated or even interfered with; for, in those days, it was the policy to encourage the Rájputs: and the chiefs became simply feudatories of the Mughal power. As the Mughal empire waned, war and confusion again formed the order of the day: the Rájput chiefs attempted to combine for their independence, but in the midst of the general warfare, the Maráthás came on to the scene. In 1756 A.D. they got possession of Ajmer, and "thenceforward Rájputána became involved in the general disorganisation of India." "Even the Rájput chieftainships, the only ancient political groups left in India, were threatened with imminent obliteration. Their primitive constitution rendered them quite unfit to resist the professional armies of Maráthás and Patháns, and their tribal system was giving way, or at best transforming itself into a disjointed military feudalism." About this time some of the Ját leaders rose to power, and founded the Ját State of Bhartpur, which still survives among the Rájput chiefships.

In 1803 all Rájputána, except the north-west portion, was paying tribute to the Maráthás; but these plunderers never got such hold on the country as in any way to obliterate the old customs of landholding.

At last the British Government interfered, and, after a series of changes in policy, which it is not here necessary to allude to, the Rájput States entered into treaties with the British power. These were all executed by the end of 1818, in which year Ajmer became British territory, it being ceded by Sindhia. The Merwára parganas were ceded at the same time, but were so uncivilised and remote, that they had still to be reduced by force some few years afterwards.

§ 2.—*Peculiarity of the Rájput organisation.*

This very brief outline of the history of Ajmer is necessary to explain the general position of affairs, and how it is that Ajmer represents so exceptional and at the same time so interesting an illustration of peculiar landholding customs.

I have remarked that there was no tribal or general settlement of Rájputs. The Government, the dominant power, alone was Rájput. The bulk of the individual landowners are not Rájputs[3]; there, consequently, has been no growth of village communities; indeed these were quite unknown in Ajmer till introduced by our own North-West Settlement system.

I shall at once then proceed to describe what was the Rájput organisation of the country, as regards the ruling classes or chiefs, and as regards the tenures of the actual cultivators of the soil.

The first thing that strikes us is that there is not one ruler, but a series of chiefs, who, by the exigencies of the case, are graded in a quasi-feudal order, and are bound to obedience to the head chief or Mahárája, and to appear in the field when required with a certain force of foot soldiers or horse, as the case might be. Apart from this, the chiefs really regarded themselves as coparceners or sharers with their leader in the kingdom. The Mahárája is the head of the oldest or most powerful branch of the dominant clan; the chiefs are the heads of the other branches, or of subordinate clans. The system of sharing or dividing the conquered territory into feudatory estates does not extend beyond the main or upper grades of the organisation—the heads of the chief branches of the clan. We do not find any further shares or small allotments of land to leaders of troops and so forth, as we do in the organisation of the Sikh misls in the Cis-Sutlej States of the Panjáb. The Ajmer territory exhibits a division of the whole, first into the royal domain or khálsa land—the estate of the

[3] Rájputs now rarely hold land, except as bhúmiyás or as holders of istamrári estates.—Settlement Report, 1875, § 98.

Mahárája or leading chief—and then into a series of estates (taluqas) for the Thákurs, Ráos, or other chiefs subordinate to him.

In each of these estates, the right of the chief was almost independent; it was subject only to doing homage to the Mahárája, and paying a nazarána on succession, appearing with the proper military force when called on[4], and rendering extraordinary money aids when the necessities of common defence required it. There were also other feudal dues paid in some cases. The estate was liable to sequestration (*zabti*) (if the ruling Prince was able to enforce it) as an extreme penalty.

Inside the estates, the tenures of land must be described in separate paragraphs: we have some cases of grant as jágír lands, some special tenures, and then the ordinary customary landholding of the villagers. But first a few words must be said regarding the revenue.

§ 3.—*Land Revenue.*

The Rája in his estate, and the chiefs in theirs, took a share in the grain, and some other cesses and local taxes also, from the landholders. As between the chief and their suzerain no regular revenue was paid; a fee or "nazarána" was paid on succession, and aid was given as required. But when the Maráthás established their power, they made every chief pay a tribute called "tankhá" (or "mámla" or "aín" in Ajmer[5]), and this afterwards was paid by custom to the sovereign power, whoever it might be.

§ 4.—*Ordinary tenure of land.*

As regards the tenure of land within the Mahárája's or the chief's estate, the ordinary form of landholding was very simple: every one who wished to cultivate land permanently, must do so with

[4] Which is ascertained and laid down for each estate according to custom.—See Rájputána Gazetteer, Vol. I., page 59.

[5] Tankhá is the Maráthi form: it indicates a fixed assigned sum; "aín" is the form of the Arabic 'aín which has a similar meaning.

the aid of a well, a tank, an embankment or some work of irrigation; for the rainfall is too limited and uncertain to render permanent cultivation otherwise possible. Any one who chose could apply to the Rája's or chief's officials, and get permission to make the work, and he acquired a permanent right (biswádarí) to the tank and the land which was watered by it. Other cultivation being only temporary, and rendered possible by a favourable season as regards rainfall, no one acquired any right in the land; it was cultivated by permission for the time being, and then lapsed into the general estate of which it was part.

It was of course natural that landholders should settle together, and so to form villages that had a separate local name; but no biswadár had any claim to anything beyond his own holding. No one was responsible for his neighbour's revenue payment, nor did the body of landholders that happened to live together, and who submitted to a common headman, who looked after the chief's grain-collections, ever dream of claiming any "common" land, or any right to an area of waste within certain boundaries.

§ 5.—*Jágír Grants.*

In the khálsa lands charitable grants were made, and, in the chief's estates also. These are always found in Oriental countries in favour of religious institutions, persons of sanctity, charities, and so forth. In Ajmer they are called "jágír;" and here the term has not the meaning which it elsewhere bears. For military service is part of the regular system of the country, consequently grants would not be made on a condition that was the normal one; and jágír simply meant a royal or princely grant in full proprietary right, with a total remission of revenue, or a reduced revenue demand only.

When a jágír was given, the grantee became entitled to all the unoccupied land in the grant, and to such as he had himself provided the means of irrigation for; but lands already in the occupation of persons who had made wells, tanks, or embankments, continued to

be held by them, and the biswádarí right was not destroyed by the grant,[6] though the holder had to pay his revenue to the assignee.

In jágír estates, the grantee collected a grain share by estimate of the crop, and fixing of the weight which each payer had to give. Money assessment was, and still is, unknown.[7]

When the district came under British rule, the true position of the jágír estates was not at first understood, and in 1874 a committee reported on the whole subject. The status of the jágírdár, in relation to the land occupiers, was formally declared in a Settlement proceeding on 13th August 1872.

Out of a total of 150,838 acres, with a revenue of Rs. 91,000, 65,472 acres, with a revenue of Rs. 43,000, are held in jágír by shrines and religious institutions[8].

§ 6.—*Bhúm Estates.*

Another ancient tenure recognised in Rájputána was the "bhúm[9]." It consisted in an absolute estate in a given area of land, which might be coupled with the condition of maintaining good order, being answerable for crime, and so forth.

It seems most probable that the bhúm holding really represented the last remnant of the former estate of a Rájput chief whose family had been displaced, in the continual struggle for supremacy that was going on. The family retained, or were allowed, out of consideration, by the chiefs who gained the upper hand, to retain a certain "bhúm" holding, and this being of ancient date and hereditary, was looked upon with great respect. It was an 'allodial' holding, that is, free from feudal obligations. From time to time bhúmiyá holdings were created by grant. It was given, for example, as "mundkati," or compensation for bloodshed, to heal a feud, or as a reward for

[6] Ajmer Gazetteer, p. 23.
[7] Settlement Report, 1875, § 87.
[8] Gazetteer, p. 23.
[9] From bhúm, 'the soil.'

service in keeping watch and ward, &c.[10] Some owed their origin to grants to younger sons and brothers of chiefs.

These holdings still survive as revenue-free holdings not resumable by the State. Up till 1841 they paid a quit-rent. They are inalienable by the proprietor.[1] They descend, however, not only in the male line to lineal descendants, but without restriction. Even great chiefs like to hold bhúm estates; one Mahárája and several considerable Thákurs are "bhúmiyás," or holders of bhúm estates in Ajmer.

The bhúmiyás were bound to give aid in repressing dacoities and other crimes in their village, and to protect travellers. For some time they were held responsible to make restitution to persons who suffered from a robbery within their limits[2].

There are still 109 bhúm holdings in Ajmer, but 16 are held by chiefs who hold "istimrárí" estates. These are, consequently, in the hands of a single owner. The others are shared like other property, and there are now 2,041 shares in bhúm holdings.

§ 7.—*Effect of British settlement.*

It will now be interesting to explain how the settlement of the country under British rule has developed or changed the customs thus described. The first thing that strikes us is, that we have now two parallel revenue systems as it were—one applying to the khálsa land, the other being a system for the management of the chief's estates, which has quite a different form.

The khálsa estate, comprising about one-third of Ajmer (and the whole of Merwára), became the property of the British Government, and was therefore subject to British law, and has been settled on the North-West system, and proprietary rights which never existed

[10] Bhúm holdings in all cover an area of 21,800 acres, of which 14,800 are in khálsa villages, 5,900 in jágír villages, and 1,000 in istamrári estates.

[1] See Regulation II of 1877, section 36.

[2] Ajmer Gazetteer, page 25. This last arose out of the custom in Rájputána that the Ráj should compensate travellers. It is obvious, however, that many "bhúm" estates would be quite unable to make any such compensation, and the custom is consequently dying out.

before have been conferred. The same procedure could not, however, have been equitably followed in the chief's estates. These had therefore to be separately dealt with. The chief's rights were recognised by 'sanad' grants, and no interference with their internal affairs has been contemplated, nor has any settlement been made for the villages. Our Government has not in fact interfered to define the right of any one, except the taluqdár or estate-holder himself. I shall first describe how matters developed in the khálsa land.

§ 8.—*Early management of the khálsa.*

At first the British officers managed the khálsa domain exactly on the lines of the original custom. The early administrators were in fact the stewards of a great estate. They built tanks and made embankments; they founded hamlets and gave out leases to settle and improve the lands. In 1849, however, a settlement of the land-revenue on the North-West system was ordered. A sketch of the history of the settlements will be given further on: here it is only necessary to say that the result was that the contiguous groups of biswadárs were formed into villages; and that the waste, hitherto at the disposal of the estate, was allotted out and divided among these "villages." The hamlets founded by Colonel Dixon were also made into villages, the neighbouring waste being given up to them. Thus, a very important change was effected. The group of cultivators, some of whom possessed the biswadári right, others of whom were mere temporary lessees, now became a "proprietary body;" they were styled in official revenue language "bhaiáchárá" villages; the waste within the area of each became the "shámilát" or common property of the village body.

This course was afterwards much regretted[3]. As soon as forest science was sufficiently appreciated to enable people to recognise

[3] As a matter of general principle, it is always undesirable that State rights should be readily given away, instead of keeping them carefully to be utilised as occasion requires. I have no doubt that the existence of many *rights of user* (or what we must practically admit as such) in the waste, had its influence in commending to the authorities the idea of partitioning the waste. It is often unfortunately overlooked,

that the clothing of Ajmer hills with tree vegetation was essential to the welfare of the country, to the supply of water in its tanks, to regulate both the surface and the subsoil drainage, and not improbably to affect the humidity of the atmosphere, it was desired to form forest estates, to be placed under conservative management. But by that time the work of 1850 had borne its fruits. The land, once the undoubted property of the State and available to form forest reserves which might have been the wealth of the country, had, in deference to a system, been given away, and it was necessary, therefore, in 1874, to make a Regulation under the 33 Vic., Cap. 3, for forming forest estates, recovering for that purpose the available waste, and allowing rights in it as compensation for the process of re-annexation[4].

Fortunately, this plan of constituting State forests has answered well. The benefits are so great that the people are beginning to appreciate them. It is certain that it was only by such a step as that taken in 1874, that the water-supply in the tanks can be preserved, and that supplies of fodder, against times of famine, can be secured.

§ 9.—*The present tenures.*

The Land Revenue Regulation[5] now orders the rights which exist under the village system. The old biswadárs have become proprietors, and now, if a settler desires to come in and clear the waste, he has to obtain the permission of the village-owners, who are the owners of the waste as their common land.

Partition of the common land is also allowed as of any other jointly-held lands: a *minimum* is, however, fixed, below which division is not allowed to go. Some special arrangements connected

that a most extensive user of the land by one set of people does not necessarily imply that the people had, or ought to have, a proprietary right in the soil This I have explained fully in my "*Manual of Jurisprudence.*"

[4] The terms under which Government can now take up what has become village land, for forest purposes, may be seen in section 6 of Ajmer Regulation VI of 1874.

[5] See Regulation II of 1877, section 7, &c.

with the levy of the revenue had modified the strict action of the North-West system; and no doubt care has been taken to mould the settlement arrangements as much as possible to suit the actual condition of the villages.

§ 10.—*State rights reserved.*

Under the new system, moreover, the State reserves to itself some considerable rights. Besides its usual right of revenue, it remains proprietor of tanks it has constructed, and owns the land (available in the bed of the tank at certain seasons for cultivation), and the land on the slopes of embankments. It reserves also all mineral rights, and may quarry for stone, gravel, &c.

§ 11.—*Other land tenures in the khálsa.*

The biswadári right has thus considerably altered from what it originally was. The "jágír" tenure and the bhúm tenure retain their ancient features, as already described. Bhúm holdings are dealt with in the Regulation (sections 31-36); sanads are granted for them, and the sanad-holder and his successors in interest are alone the proprietors. A rule of succession is also laid down. There can be, as I said, no alienation of a bhúm estate, except in favour of a person who is a co-sharer holding under the same sanad.

No jágir is recognised which has not been granted, confirmed, or recognised by a sanad issued by proper authority[6]. In this sanad conditions may be entered making the rules contained in the Land and Revenue Regulation, regarding alienation, succession, or maintenance prescribed for istimrári estates, or bhúm estates (as the case may be), or any other special rules on these subjects that shall be in force as regards the estate, binding; and the jágírdár must accept these rules or resign the estate. There are some bhúm holdings inside jágír estates.

[6] Regulation II of 1877, section 37, &c.

§ 12.—*Subordinate tenures in khálsa villages.*

Under the original system of landholding implied by the biswadári right, there was but little room for the growth of subordinate tenures. "A non-proprietary cultivating class," says Mr. LaTouche, "hardly exists in either district." Where tenants exist, they generally pay the same rates of produce as the proprietors themselves paid before the regular settlement[7].

But though there may be but little opportunity for the growth of tenant-right, there are cases in which a right has to be provided for, which cannot now be conveniently described otherwise than as an occupancy right.

In the days of rapine, raid, and internal war, which make up the history of the Rájput State, it was inevitable that land should have changed hands; one tribe got the upper hand and had little hesitation in displacing others: not only so, but the repeated occurrence of famine has caused the landholders to get into debt. Hence it may often have happened that an old biswadár was turned out of his land, or was obliged to give it up owing to poverty, inability to pay the revenue, and so forth, but still managed to retain part of it as the "tenant" of the supervening owner. It is now impossible that the effects of such ancient wrong-doing can be reversed; so the "tenant" remains, but is privileged, and the Regulation specially protects him as an "ex-proprietary tenant[8]." Such a tenant is allowed a permanent tenure, at a rent which is to be five annas four pie per rupee less than the prevailing rate paid by tenants-at-will for lands with similar advantages in the neighbourhood. No agreement to pay higher rent is valid.

There may be other "occupancy tenants[9]," as they are mentioned in the Regulation. This is a wise provision. It virtually allows full latitude to actual facts. Any one can claim an 'occupancy

[7] Settlement Report, 1875, section 96.

[8] Regulation II of 1877, section 41, &c.

[9] For example, they may have taken part, though in an inferior position, in building the tank and cultivating the soil that gave origin to the owner's or biswadár's right.

right' and prove it by the custom of the village, by special agreement, and so forth. The Regulation admits the possibility of such a right without defining it, and merely attaches certain legal protective provisions to such a right when proved to exist.

The main security such tenants have is, that besides the right of occupancy (which cannot be defeated, except pursuant to a decree of court given on specific grounds or on failure to satisfy a decree for rent[10]); the rent is always fixed, or may be fixed on application, at settlement, or subsequently by the revenue officers.

It is unnecessary for me to describe the simple provisions of the Regulation regarding the division of crops between landlord and tenant, the practice for ejecting tenants when they are lawfully to be ejected, and regarding the relinquishment of holdings by the tenant. The Regulation itself may be consulted.

§ 13.—*Modern state of rights in Taluqas or Chiefs' Estates.*

Side by side with the khálsa villages, which we have just been considering, are the chiefs' estates, in which no such settlement system has been applied. The estate itself and the right in it has been defined, but its internal affairs are not interfered with. The chiefs' estates, called taluqas (the chiefs being taluqdárs), are secured to them by law.

The more important of the chiefs' estates or taluqas have been conferred in absolute proprietary right by virtue of sanads called "istimrári" grants. Hence the important taluqa and jágír estates are held as "istimrári estates."

The istimrári estates only pay revenue to Government in the form of a permanent and unenhanceable tribute. Till 1755, they had paid no revenue, but then the Maráthás imposed a tribute, and various other cesses also. The British Government abolished the cesses, but at first asserted a right to re-assess the tribute. This right was, however, formally waived in June 1873.

[10] Regulation II of 1877, sections 52—54. An "ex-proprietary" tenant cannot be ejected even on a decree without the sanction of the Commissioner.

The istimrári tenure is also associated with certain special rules legalised by the Land Revenue Regulation of 1877[1]. The estate is inalienable by any *permanent* transfer: mortgage beyond the life of the mortgagee is also invalid.

Succession is now by primogeniture only. Hence there is no *division* of these estates, a fact which has a very important influence. The "istimrárdár" enjoys also some special immunities and protection regarding criminal proceedings, and as regards money decrees of the civil court.

Nazarána is paid according to old custom to the Government on the occasion of a succession.

The istimrári estates are now some sixty-six in number, whereas the original fiefs were only eleven. But this will illustrate the importance of the principle of succession by primogeniture. I have in a previous chapter had occasion to remark, in speaking of the old Hindu Ráj, how in some families the principle of indivisibility was preserved, while in others the estates were divided till nothing but small estates, which practically formed zamíndári villages held by a number of selected owners, remained. In Ajmer, it seems the principle of indivisibility, that is, succession to the eldest heir alone, was not at first recognised. In former times the estate was divided among the succeeding sons and heirs, according to Hindu law, though the "pátwi," or heir to the dignity of the chief's seat, got a double share[2] in recognition of his position as chief. Then in course of time the eldest came to take the estate at large, and the other brothers got a village or two each, on what was called a "grás" tenure[3].

It is thus the result of the former divisibility of estates that the eleven original fiefs broke up into the present number; at least that

[1] Regulation II of 1877, sections 20—30.

[2] See Ajmer Gazetteer, page 22. It is interesting to notice that just the same thing may be observed in the estates of the Sikh jágírdárs and chiefs of the Cis-Sutlej States. If there are four sons, the estate will be divided into five lots, of which two go to the eldest.

[3] "Grás" means literally 'a mouthful,' and implies that the grantee gets a portion of the produce of the villages to which the grant extends for his maintenance.

is the chief cause, for during the stormy history of Rájput estates, a powerful branch of a family may have succeeded in effecting a separation of a portion of the estate for his own benefit, without any general principle of divisibility being recognised.

In short the existing number and size of the estates or taluqas has resulted from the dismemberment of larger estates; and in some cases, where division of the estates has been effected, the branch estate has remained separate but subordinate to the larger one[4]. Had the principle of division gone on, the estates would in time have become completely broken up into mere village-estates, just as we saw in the curious case of the Tílok Chandi Báis in Rai Bareli. But the custom of indivisibility gained ground, and it is now fixed by law. Younger sons now only get a cash maintenance, or a life-grant of villages, or something of that kind.

The istimrári estate-holders (as well as some of the larger jágírdárs) became, in the course of time, heavily encumbered, and in 1872 a Regulation was passed for their relief. Government advanced some seven lakhs of rupees, which was the aggregate amount of the debts, and these were paid off or compromised under the Regulation : the advance with interest is being gradually paid back to Government.

The present position of the chief's estate is, therefore, a somewhat modified one as compared with what it formerly was. In old days the chief's estate was held conditionally on military service; it

[4] The Commissioner, Mr. Leslie Saunders, writes to me as follows :—

"The lesser istimrárdárs are banded together in groups according to their descent, under the present chief representative of the original stock from which they have sprung; such holders of divisions of estates are sometimes called sub-taluqdárs. The lesser istimrárdár is, nevertheless, full proprietor of his estate, only he pays his revenue or tribute, not direct to Government, but through the chief with whom he is lineally connected. He sits behind the chief in darbár, and is bound to observe the ceremonial acknowledgments of social supremacy customary in native courts. This is, however, sometimes evaded. On failure of an heir, the estate of an inferior istimrárdár would ordinarily revert to the head of the line; and in two instances estates unable to pay their revenue have been made over permanently to the head of their clan."

was liable to sequestration for misconduct, at least in theory. In the first days it paid no revenue, but afterwards not only was a revenue levied, but the revenue was not fixed, but was liable to enhancement, at least virtually so, in the form of cesses and forced aids.

Our Government has conceded a fixed revenue, granted a permanent estate, rendered the estate indivisible and inalienable by permanent transfer, and has enforced no condition of military service.

§ 14.—*Subordinate Tenures in Istimrári Estates.*

There may be bhúmiya holdings and grants in jágír inside the chief's (istimrári) estate, just as there are on Government lands, but they are few in number[5]. As regards subordinate tenures, I have already remarked that Government has not introduced any settlement into the istimrári estates. Having fixed the extent and declared the nature of the tenure, no internal interference in the way of sub-settlements has been contemplated. Government was opposed to the policy of making records or requiring sub-settlements for the protection of the village landholders, and in this respect the istimrári villages are entirely differently situated from what they are in khálsa lands.

In the early days of British rule, Mr. Cavendish (1829) made a formal enquiry, and the istimrárdárs admitted that the permanent improver of land had a right which was virtually the same as the biswadári right recognised in the khálsa[6].

Consequently, though the chief is legally the sole owner, and the people are his tenants, those who would have been "biswadárs" in the khálsa, have a *practically* indefeasible right. As a matter of fact, disputes between a chief and his tenants rarely or never come before the authorities. The Land Revenue Regulation, giving effect to the full proprietary right in 'istimrári' estates, provides

[5] The bhúmíya holdings in istimrári estates only amount to about 1,000 acres.
[6] Settlement Report, 1875, §§ 85, 86.

(section 21) that all tenants on such estates shall be presumed to be tenants-at-will till the contrary is proved.

§ 15.—*History of the settlement of Khálsa villages.*

The territory of Ajmer has remained as ceded in 1818, with the exception of five villages given over by Sindhia in 1860[6]. Mr. Wilder was the first Superintendent. The Maráthás established an arbitrary system of taxation, but shortly before cession a land revenue had been fixed, which was, however, exclusive of the cesses. The chief's estates paid a fixed tribute, and an agreement was come to that any future increase should be in the form of separate cesses; the chief, no doubt, feeling that if a change of rulers occurred, they might succeed in getting off payment, which would be difficult if such cesses were once consolidated with the tribute.

Sindhia farmed the villages for the amount of the "aín" or fixed revenue, but extra cesses were levied under 44 different heads[7].

This system was, of course, abolished by the Superintendent, who returned to the earlier system of estimating in cash the value of one-half the grain produce of the village. The assessment, however, broke down, owing to famine and failure of crops; and after that a short settlement was made under Mr. Middleton.

In 1827 Mr. Cavendish succeeded to the district and revised the settlement. This officer was much more desirous of moderation in the revenue assessment; and he seems also to have conceived the idea that the groups of biswadárs, with their patel or headman, formed "communities" who might be regarded as owners of the area within the village limits[8].

[6] Gazetteer, p. 75.

[7] One such cess was the perquisite of Sindhia's wives; another, called "Bhent Bai Sáhiba," went to his sister: his daughter and "pír," or spiritual adviser, each received a certain cess (Gazetteer, p. 75).

[8] Settlement Report by J. D. La Touche, C.S, 1875, § 77, &c.

In 1835-36 Mr. Edmonstone proceeded to make a settlement for 10 years, still spoken of as the "decennial settlement," and reported on the 20th May 1836. This report did not endorse the idea of the village being proprietary. The tenure was compared to that described by Sir T. Munro (Governor of Madras) in Arcot. The holdings were separate, though cattle of the village grazed in common over all unenclosed lands, when the crops were off the ground.

The most important fact in the revenue history of Ajmer is the appointment of Major Dixon in 1842. This officer had previously been in charge of Merwára, where his success had been great. On the expiry of the 10 years' settlement, Major Dixon held the whole district "khám," as the Merwára parganas were held. Within six years, more than four and a half lakhs of rupees were wisely spent in tanks and embankments, and a much lower rate of collection was established ; the assessment was reduced to two-fifths of the produce, and the "zabti" or cash rates levied on certain of the more valuable crops were lowered.

Mr. Thomason, when Lieutenant-Governor of the North-Western Provinces, visited Ajmer in 1846, and though he could not but admire the work of Major Dixon, he felt that such an administration was solely dependent on the skill and energy of one man ; some system that could be worked by any ordinary officers was necessary. As Mr. Thomason was naturally in favour of the North-Western system, he concluded that the plan of village assessments was the only one that would answer as a permanent arrangement.

A settlement was accordingly carried out in 1849-50 on the "mauzawár" plan. It has been said that the settlement was mauzawár only in name[9]. This may be true as regards the collections, which were levied on the individual holdings, since it was not practically possible, in a country so liable to famine or failure of crops, really to make the whole village responsible for failure of some of its cultivators. But what is at least equally important, and

[9] Gazetteer, p. 86.

what made the settlement essentially mauzawár, was, that under orders received, Colonel Dixon divided out the land among the villages, giving the adjacent waste to each, and thus erected the old independent biswadárs and their patel into a proprietary body who *became the joint owners of the entire area, waste and cultivated,* in the village. The village boundaries on this plan were demarcated in 1849[10].

§ 16.—*Present form of administration.*

With Colonel Dixon's death ended an important era in Ajmer Revenue History. In 1858 the district of Ajmer was united with the Merwára parganas under one "Deputy Commissioner," who was subordinate to the "Agent to the Governor General and Commissioner." This lasted till 1871, when a separate Commissioner was appointed, and the Agent to the Governor General for Ráj-putána became *ex-officio* Chief Commissioner.

For Merwára there is an Assistant Commissioner at Beáwar. The district is divided into tahsíls under tahsíldárs on the usual North-West plan.

The province is organised generally, as a non-regulation province. Its laws will be found collected in the Ajmer Code, issued by the Legislative Department of the Government of India. It also is a Scheduled District under Act XIV of 1874[1].

§ 17.—*Recent Settlement proceedings.*

The history of the district since the settlement of 1850 must here be passed over.. It is a record of struggle with difficulties owing to unfavourable seasons. At one time the rain fell in unseasonable

[10] Settlement Report, 1875, §§ 80, 81. The villages were now called bhaíachár. As usual with these official changes, the people did not appreciate them. "Even now," says Mr. La Touche, "the change is hardly understood and is not appreciated by the people. Daily petitions were filed by men anxious to improve the waste land of a village, praying that Government will grant them leases in its capacity of landlord." Of course such petitions have to be referred to the "village proprietors" who now own the waste.

[1] *Gazette of India*, 20th October 1877, p. 605.

torrents, bursting embankments, breaching the banks, and causing floods which rotted the crops and swept away the soil. At another, drought lasted late into the season, cattle died and revenue could not be paid. But in spite of everything the condition of the country, under wise management, slowly improved[2]. In 1868-69 the district was visited by a famine of exceptional severity and duration[3].

After the famine, which destroyed a large number of the cattle, as well as a high percentage of the population, and produced a fearful state of indebtedness among the people, a revision of settlement was made.

The old custom was that biswadári holdings were not saleable, so that mortgages are the custom of the country. Even now, land is never sold in execution of a decree of court. After the famine, the last settlement operations disclosed the fact that the mortgage debts amounted to Rs. 11,55,437[4].

The report of the revised settlement is dated 1875. Of course the village settlement is maintained, but arrangements have been made which mitigated the difficulties of the theoretical joint responsibility[5].

[2] In 1860 Major Lloyd minutely inspected the district and made a complete and interesting report on its condition, which fully bears out what is stated above.

[3] See a good account of this in the Gazetteer, pp. 90, 91.

[4] Gazetteer, p. 95.

[5] On this subject Mr. LaTouche writes as follows (Gazetteer, p. 93):—

"The village system of the North-Western Provinces is not self-acting beyond a certain point, and a mouzawár settlement cannot succeed in Ajmer-Merwára. By the term 'mouzawár' is meant a settlement where the assessment is based on the average of good and bad seasons, and where the principle of joint responsibility is enforced in the collection of the revenue. The seasons present too great vicissitudes to allow of an equal annual demand being assessed, but this difficulty has been partly surmounted in the recent revision by the assessment of water revenue * * * separately from the land revenue on the unirrigated aspect. The assessment on the dry aspect includes the full assessment of well land, but in each village where the tanks fail to fill, the water revenue will be remitted each year. The principle of joint responsibility has not been formally abolished, for cases may arise (though the cultivated area cannot be largely increased in any village) in which it would be just to enforce it. One of the main objects of the recent settlement, however, has been to reduce it to a minimum.

In the present settlement each biswadár or khewatdár has his own revenue payment recorded, so that in reality the defaulting holding can at once be traced, and the joint responsibility remains in the background, to be had recourse to only if circumstances make it right and proper.

§ 18.—*Assessment of revenue.*

As all permanent cultivation is dependent on tanks, or on natural tanks formed at the head of a ravine by the aid of embankments, the classification of soils for the purpose of assessment has chiefly reference to the tank and its capabilities. The tank has a double importance. It is the source of irrigation, and besides that, as the water dries up, the bottom becomes culturable. Land so cultivated is called "ábi" land.

We find accordingly the following classes of tank lands :—

(1) The tank supplies water for both spring (rabi') and autumn (kharíf) harvests: here the tank always contains water, and so there is no ábi cultivation on it.

"All well-known and recognised divisions of a village have been allowed to choose a headman, and each cultivator has been permitted the option of deciding through which of the headmen he will pay his revenue. The total amount payable through each 'patel' has been added up, and a list of each headman's constituents given to the headmen, and filed with the settlement record. Thus, in a village paying Rs. 1,000 there may be five patels, two responsible for Rs. 250 each, one for Rs. 200, one for Rs. 225, and one for Rs. 75. Under the old system the tahsíldár demanded the revenue from those among the headmen whom he considered the most substantial in the village. Now, he can tell exactly how much he should collect from each patel; and if the representative of any *thok* or *patti* cannot be made to pay, very valid reasons indeed should be adduced before the representative of the other divisions of the village are called on to make good the deficiency. * * * * * No real *thoks* and *pattis* exist in Ajmer-Merwára, and for a number of more or less arbitrary sub-divisions of land has been substituted an agglomeration of holdings bound together by the fact that the owners have selected one of the headmen, sanctioned for the village, as the representative through whom they will pay their revenue."

This illustrates the remark I above made about "bhaiáchárá." The Ajmer villages are not naturally bound together by common descent, and cannot therefore exhibit any real divisions or sub-divisions according to the main and minor branches of the family, so that there can be no natural lien, whereby one patti is answerable for the default of the other.

(2) The tank gives water enough for one or two waterings for the rabi' harvest, and the land at the bottom of the tank becomes culturable late in the season.

(3) The tank only gives water enough to start the rabi' sowings, and the land consequently emerges early in the season.

(4) Tanks which, when the rainfall has been so favourable that not much water is required from them to irrigate kharíf crops, have water enough to start the rabi' sowings (after which the soil of the tank itself can be sown).

(5) Tanks which only have scanty water for kharíf irrigation; none over for rabi' sowings: the soil at the bottom is here not thoroughly moistened, but still a rabi' crop can be sown on it.

The assessment on these tank-bottoms and land irrigated by the tank, is divided into a charge for water and a charge for soil. The latter is the highest baráni rate, or rate for land that is not irrigated. This of course is low, and the greater part of the assessment is a charge for water.

It was a question how the water assessment should be levied: for the inferior tanks it was decided to include the water revenue in the rate entered in the khewat, and the holder engaged to pay the whole. It is, however, for the revenue authorities to determine whether the whole amount can be levied in any given year.

This plan is not adopted in the case of the larger tanks, which include a great part of Ajmer and the first class tanks in Beáwar and Todgarh. Here the water rate has been excluded from the sum shown against each holding in the khewat.

The lump sum of water assessment is added to the total village soil assessment. "The lump sum is to be made good from the fields actually irrigated in each year, unless its incidence on the irrigated area exceeds a certain maximum or falls below a certain fixed minimum. Thus, in the case of the Diwára tank, there are 244 acres measured as 'tálábi.' The water revenue of the village was assessed at Rs. 1,068, being at a rate of Rs. 4-6 per acre, as the irrigated area appeared to represent the full capacity of the

tank in its present state, and the rate and the resulting assessment seemed fair and reasonable. It was provided in the engagement that this sum, Rs. 1,068, should be yearly made good by the irrigated fields, except when its incidence on the irrigated area exceeded Rs. 5, when the actually irrigated area should be assessed at Rs. 5 and the balance remitted. It was provided further, that when the incidence of the assessed water revenue fell below Rs. 3-12 (as it would if a larger area were irrigated by economy of water or some other improvement), the actually irrigated area should be assessed at Rs. 3-12, and the excess credited to Government[6]."

§ 19.—*Merwára.*

The parganas of Merwára were never held by Rájput chiefs, nor do they exhibit any traces of special landholding customs. They are jungle countries, peopled only by settlers who cleared the land and cultivated it. After the country was reduced to order by the British arms, it has been governed in a simple patriarchal fashion. The villages were held "khám," and Colonel Dixon's system was to take a small proportion (one-third) of ordinary crops, the grain then being converted into a money assessment, by valuation at current rates. Land newly broken up was allowed a progressive assessment beginning with one-sixth for the first year, one-fifth for the next, one-fourth for the third, &c., &c., till the one-third rate would be attained.

Persons were encouraged to make wells, tanks, and embankments, by a remission of assessment.

Lands under valuable crops, as cotton, maize, sugar, and opium, paid at "zabti" or money rates per acre.

At the settlement of 1850, the village settlement was introduced, and farmers were settled with for each village.

§ 20.—*Revenue Procedure.*

The revenue procedure does not call for any explanation. Part VI of the Regulation contains the details of it. It is notice-

[6] Settlement Report, 1875, §§ 260—265.

able. however, that when matters are submitted to arbitration, an appeal lies against the decision.

The process for realising arrears of land revenue is not dissimilar to that under any ordinary Upper Indian Revenue Act; arrest, imprisonment, attachment and sale of movable property, attachment of the estate, transfer to a solvent 'shareholder,' and sequestration of the estates for a period—these are the processes as elsewhere. If all these fail, *other* immovable property may, under special sanction, be sold, but *not the land itself* on which the arrear has accrued.

Headmen who have paid up in the first instance may realise the revenue from the co-sharers by a suit, in which they may join as many of the sharers as are indebted for the same instalment. There is no power of distraint without a suit.

BOOK IV.

THE RAIYATWARI SYSTEM.

CHAPTER I.

THE BOMBAY SYSTEM.

SECTION I.—INTRODUCTORY.

§ 1.—*Special reasons for describing the system.*

IT was my original intention to confine this Manual to the provinces directly under the orders of the Government of India, and this would have precluded my giving any account of the Revenue systems of Bombay and Madras. But inasmuch as these provinces represent two different developments of the great rival to the Bengal system—if I may so call it— "the Raiyatwárí" system, the total omission of them would leave the student with so very incomplete a notion of the revenue administration of India, that I feel it impossible altogether to drop the subject, the more so as I do not see any prospect of local Manuals, written with the same general object as the present, being prepared.

For introducing some account of the Bombay system, I have indeed another reason. Berár, one of the provinces with which I am directly concerned, was settled on the Bombay system, and its revenue business, already conducted on the general model, will in all probability before long be guided definitively by the Bombay Revenue Code (Act V of 1879).

§ 2.—*Influence of the system on other provinces.*

Nor is the raiyatwárí system one that has no connection with the systems of other provinces. It certainly was not without its influence on the subsequent developments of the Bengal system. When the Regulation VII of 1822, which is the foundation of the North and Central India systems, was drawn up, the Minutes of

Sir T. Munro, in favour of dealing with the individual cultivator, without any middleman proprietor over him, had excited a strong interest. It is impossible to doubt that they had their influence on the views of revenue legislators, whose minds were at the time, I may almost say, in a state of recoil from the tension, which, in the previous years, had been all in the direction of a settlement with great landlords. The North-West system which deals with an *ideal* landlord,—the communal-body of the village—is in effect, though not in intention, still less in set terms, a sort of 'happy mean' between the settlement with a middleman, and a dealing with the individual cultivator direct.

The suitableness of every revenue system depends on the past history of the country to which it is to be applied. If for ages it has been the custom to regard the village as a sort of corporation, it may prove difficult, or at least unadvisable, to change to a raiyatwárí system. If the villages have never been accustomed to a joint responsibility, it is practically impossible to introduce the lump assessment.

In the discussions that took place many years ago as to the relative merits of the village and the individual holding system this was rather lost sight of. It is not possible profitably to discuss the merits of systems in the abstract. The Collector, whose official life has been passed in a district where one or more representative headmen manage the village affairs, feels that it would be impossible for him to deal with many thousands of individual holdings; the Collector who has succeeded to a Native rule under which individual assessments were always practised, feels no such difficulty. It is therefore to little profit, that an objection is assumed and counterbalancing advantages are set forth[1]; although,

[1] An elaborate comparison of the two systems will be found in a letter, dated 17th October 1840, by Messrs. Wingate and Goldsmid, printed as Appendix I to "Official correspondence on the system of Revenue Survey and Assessment in the Bombay Presidency," reprinted in Bombay in 1877. This volume contains the celebrated Joint Report 1847, of the three Superintendents, Messrs. Wingate, Goldsmid, and Davidson, and it is to the reprint that I refer, when in the sequel I mention the "Joint Report."

no doubt, when theoretical objections are started against a system, the originators of that system are entitled to assume the objections, and show that they can be overcome.

§ 3.—*Early history of Bombay Settlements.*

In the Bombay districts, the method of revenue management to which the British Government succeeded was that of the Maráthás. Many of the Dakhan districts had been before that settled under Malik' Ambar[2], who had taken pains to preserve, wherever he found it, the joint-village organisation; and consequently his assessments were usually in the form of a "tankhá," or lump assessment on the whole village. But when the Maráthá power was firmly established, they usually abandoned the old tankhá for the "kamál" assessment[3], which dealt with each individual holding and was based on a classification of the soil. The Maráthá was too keen a financier to allow any middleman to intercept the profits, and it was only where his power was insecurely established, or in the days of his decline, that he called in a revenue-farmer to make good a certain lump sum to the State treasury.

In the early days of our rule, endeavours were made to continue the old management such as it was found, and from want of experience and defect of the machinery of control, frequent over-assessment and much mismanagement doubtless occurred. It was soon apparent that the Government must take a new point of departure. The Governor (Mr. Elphinstone) was desirous of introducing a system which would have in effect coincided with that of the North-Western Provinces. He would have bound together the

[2] Malik' Ambar was an Abyssinian who rose to power as minister under the later kings of the Nizám Shahi dynasty of Ahmadnagar at the end of the 16th or beginning of the 17th century. The kingdom had various limits, according to the power of the ruler; but during the long series of years that this able minister sustained the fortunes of the house, it included all the Aurangabad province and the west parts of Berár, and also a part of the Koukan on the sea coast.

See Elphinstone's History (5th edition), pages 553 and 758, and Grant Duff's History of the Maráthás, Volume I, page 95.

[3] See Report on the Settlement of Indapur taluka, Poona Collectorate, Selections, No. CLI, New Series, Bombay, 1877.

separate holders of land in each local group of fields which we call a "village," and made them a *joint* body of proprietors together liable for a lump sum assessed on the entire area of the estate. But this plan, as a general one for the whole of the Bombay districts, failed. Though there were still surviving in some parts of Bombay village communities* naturally of this order,—communities which the student, who has read the account of the North-Western Provinces tenures, is now familiar with—in other large tracts of country, the local groups were only united by the fact that they were neighbours, and that their affairs were managed by a headman whom they all acknowledged, and that they had also other hereditary officials, artisans and menials whose services belonged equally to the whole village. It was not found practicable to create or restore a joint responsibility for the revenue in these cases.

Then the question arose, what system should be adopted? On the one hand, it is probable that the influence of Sir T. Munro's Minutes in favour of the raiyatwárí system, which were then well known, operated a good deal in favour of a decision against Mr. Elphinstone's plan. There was also the impossibility of altering the constitution of the villages.

Facts are always stronger than theories, and the ultimate decision may be traced to the actual previous existence, in how-

* Though rarely. These are the Narwa and Bhágdári villages in the Kairá and Baroch Collectorates. It is no doubt true that the recognition by the people of a mirási tenure, *i.e.*, a tenure where some persons had a superior right in the land, while others were only "uprís" and holders on a gatkuli tenure, pointed to an earlier form of proprietorship which had fallen into decay. But these terms do not necessarily imply the existence of a really joint village system. (*Cf.* the case described at page 488). In fact, in Bombay, it was difficult to avoid recognising what is so clearly indicated in other parts of Southern India, that villages are of two classes, one where there had been an original joint constitution, and another where there was a mere aggregate of individual cultivators, held together only by the institution of hereditary headmen and officers.

See Stack's Memorandum on Current Land-Revenue Settlements (Home Department, Calcutta, 1880), page 9.

ever imperfect a form, of a raiyatwárí settlement. The non-united type of village, found as it was over the whole of the plain country of the Dakhan[5], formed the preponderating type over the major part of the presidency; and when it is recollected that the Maráthá Government always recognised separate and individual rights, even when in bygone days a joint constitution might really have existed, it is almost obvious that a raiyatwárí settlement was the only one that suited the habits of the people and conformed to the traditions of the past[6]. It was not the necessity of dealing with thousands of individual cultivators (although that was urged by Mr. Elphinstone), but the want of a proper survey, a permanent demarcation of fields, and a settled principle of assessment, that presented obstacles to successful revenue management.

SECTION II.—THE SURVEY SYSTEM.

§ 1.—*The Joint Report.*

When therefore the period of tentative farming and similar arrangements for collecting the revenue came to an end, and a

[5] I am assured by one of the most experienced Revenue Officers in Bombay that the plain country of the Dakhan never had anything but non-united villages. The author of the general sketch prefixed to the Administration Report of 1872 speaks of the whole of the Dakhan as being occupied by villages in which two classes of persons were recognised, the "mirási" or hereditary proprietary class, and the "upri" or tenant or inferior class. These terms do not, however (as observed in a previous note) imply that the really joint village was ever prevalent. It may well be, that the "mirásdárs" are merely representatives of headmen's families which exacted a rent from all who did not come in with the first founders of the villages, but joined by permission at a later time. Whatever may be the true explanation, it seems quite clear that, for all practical purposes, the Dakhan districts may be described as in the text,—an actually general prevalence of joint-villages cannot be asserted.

[6] And when it is said that the "raiyatwárí" settlement was "introduced" into Bombay, it should be remembered that the phrase is not strictly correct. It was not introduced as a system, it had always existed from the Maráthá days. What was "introduced" was the improved method of survey assessment.

regular survey system was devised, it was to the method of properly determining the revenue unit of land, and to the rules by which it was to be surveyed and assessed, that attention was first directed.

The regular system of Bombay was inaugurated by the appearance of the "Joint Report" of the three Revenue Superintendents in 1847. The system itself had indeed been put into practice since 1836, but the several revenue surveys acted independently, and their operations were "somewhat diversified," so that it remained for the Government, on the basis of the Joint Report, to bring the practice into uniformity, and to insure the results of the surveys being turned to the best account and maintained in their original integrity in the future management of the districts.

§ 2.—*The importance of the "Field" or survey number.*

It has been already stated that one of the great features of the raiyatwárí method is, the facility it affords for the contraction and expansion of operations by the cultivator according to his means. He is bound by no lease. The amount of his assessment is indeed fixed for thirty years (or whatever other term may be ordered), but his title to the land goes from year to year: he may perpetuate it at his pleasure. So long as he pays the assessment, the title is practically indefeasible. But if he feels unable to work the land he holds, he may relinquish (under suitable conditions) any part of it; or if prosperous, he may take up more land, if land happens to be available. It is therefore impossible to deal with an entire "holding," which may thus vary from year to year. It is necessary to descend to a smaller unit,—the field or survey number—one or many of which may, according to circumstances, constitute a holding.

It will be well to state at the outset that the "field," under the system we are considering, is far from being an arbitrary thing. It is necessary of course to lay down, in ideal, an area which as far as possible it is desirable to attain; but existing and well known divisions into fields were always allowed due consideration, and under no circumstances were differences of tenure and marked natural distinctions

ignored, in order to attain an arbitrary standard. In waste lands, it was of course open to adopt a size for the survey number corresponding to the standard officially prescribed.

The idea of the Joint Report was to start from the area which a raiyat could cultivate with a pair of bullocks[7]; this would vary according as the cultivation was wet or dry, or as the soil was light or heavy, and generally with the climate and circumstances of the locality.

§ 3.—*Standard size of cultivated fields.*

It was found that in each class the following area was convenient as a standard :—

20 acres for light dry soil.
15 „ „ medium.
12 „ „ heavy.
4 „ „ rice land (irrigated).

Then, as a rule, every "number" should contain a number of acres, of which the foregoing table gave the *minimum ;* double that was the *maximum.*

If, however, it should appear that an aggregate of the proper number of acres could not be obtained without including plots held under a different tenure, as where part was a revenue-free plot, and another held at a special quit-rent (found in Bombay and called "júdí"), then such separate tenures would not be comprised under one number, but were made into separate numbers, even though the minimum dimensions should not be attained.

In the same way, if possible, different kinds of cultivation—wet, dry, &c.—would be put under separate numbers.

Where one man's holding, or that of a body of sharers, formed a plot of an extent approaching the standard, it would of course be made into a separate number. If it exceeded the standard, it

[7] "As farming cannot be prosecuted at all with a less number than this, when a raiyat has only a single bullock, he must enter into partnership with a neighbour, or obtain a second by some means or other, in order to be able to cultivate at all." (Joint Report, § 13.)

would be made into two or more numbers, because there would be no inconvenience in one man or one body holding two or more numbers.

Where there were small holdings of the same kind, two or more were clubbed under one number, which was also no inconvenience, since by recording the holders as having shares separately liable (pôt-numbers)—in case the sharers desired it—all separate rights were preserved.

But this practice, as already stated, was never applied to separate holdings *of different kinds;* they were to be given separate numbers, even though the prescribed standard could not be attained.

§ 4.—*Size of numbers in waste land.*

Lands not fit for cultivation, or those still covered with jungle, were not divided on these principles, but were merely marked off into large blocks, each under one number. This of course did not include land which was culturable, but happened to be fallow, or temporarily unoccupied, but only to large tracts of waste or jungle which could only be brought under the plough, under the operation of the "Waste Land Rules," and by the gradual growth of the demand for land and the spread of cultivation[8].

§ 5.—*Size under present rules.*

The Code now prescribes[9] that no survey number is to be made less than a *minimum* size to be fixed from time to time for the several classes of land in each district, by the Commissioner of Survey, with the sanction of Government. For the Dakhan districts (above Ghát) of the Northern Division, as well as for the Southern Division, the rule now is, that any recognised occupancy is made into one field, if under 30 acres. A field of more than 30, and less than 50, is divided into two; one of more than 50, but less than 70, into three; and so on.

[8] These rules were in force when the Berár survey settlement was made.

[9] Section 98.

§ 6.—*Village and field boundaries.*

The Bombay survey is just as much concerned with the village boundaries[10] as the North-Western Provinces survey is. If the village boundary was not ascertained, it is clear that the boundaries of the fields lying on the boundary would not be. Moreover, the revenue-rolls and jamabandis are made out village by village, and there are also questions of jurisdiction which require the indication of village boundaries.

The maps therefore lay down the village boundary as well as the internal division into fields or survey numbers. Village boundaries are settled by agreement, or by reference to a pancháyat, or by the survey officer, subject to an appeal.

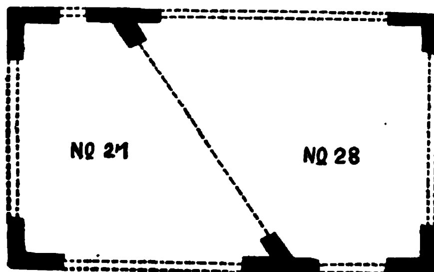
The field boundaries are also laid down, if there is no dispute, on the assertion of the occupant attested by the village officers. If there is a dispute, the survey officer takes evidence and decides. Arbitration may be referred to by consent of both parties.

If the dispute arises after the survey, the Collector decides.

It is of course of the greatest importance that the boundaries of fields should be permanent and well maintained. The Superintendent of Survey is empowered to determine the size and material of the marks[1]. The plan usually adopted is to make earthen ridges or set up stones at the corners of the field.

[10] Code, section 118.

[1] Which, of course, varies according to climate and locality. In some climates earthen ridges are washed away: stones have also their disadvantages. The method of corner marking will be understood from the sketch.



To connect one mark with the other, a strip of land is left unploughed, and this soon gets covered with grass, palm-bushes, and so forth, so that it is impossible to mistake the boundary.

In Berar there are rules for the maintenance of these strips between the marks (Berar Settlement Rules XXIV, XXV).

Strict rules are in force under the Bombay system for the periodical inspection of the field marks, and the Code, in Chapter IX, gives ample powers for their maintenance. These will be alluded to under the head of Revenue business. It is obvious that the entire preservation of the results of the survey depends on the keeping up of the boundary marks.

§ 7.—*The survey.*

The field survey is on a scale of 8 inches to the mile. Great pains are taken in constructing the maps.

In all the later surveys the Great Trigonometrical triangulation has been taken as the basis, and the system of village traversing has been adopted, so that the maps have a topographical as well as a revenue value.

The survey work is afterwards combined into táluká[2] and district maps, which are furnished by the department, as well as the large scale field-to-field maps.

§ 8.—*Commencement of a Survey-settlement.*

A survey settlement is set in operation by direction of the Governor. The Code[3] does not require any notification in the Gazette to begin with; that comes afterwards, when the assessments are declared.

For the purposes of survey and assessment the Governor in Council appoints such officers as may be necessary[4]. The Code speaks of any one appointed under this section as a "Survey Officer."

[2] In Bombay they use the Maráthí form—táluká—of this (originally Arabic) word.

[3] See section 95.

[4] See Code, Chapters VIII, IX, and X, and section 18.

There is a Survey Commissioner who supervises the whole; while individual settlements are in charge of Superintendents of Survey or Survey Settlement-Officers, with assistants, under whom again are staffs of surveyors, classers of soils, &c. Appointments are to be notified (in the Gazette).

A convenient clause distinctly specifies that subordinates may, by delegation, exercise such portion of the powers of their superior as he may direct, but always subject to a right of revision by the superior.

A special Chapter (III) deals with *security* to be furnished by officers when necessary, and this includes not only the Survey but the ordinary Revenue staff.

SECTION III.—THE ASSESSMENTS.

§ 1.—*Classification of soil.*

All land, whether applied to agricultural or other purposes[5], and wherever situate, is liable to the payment of land revenue to Government, according to the rules of the Code, unless expressly exempted. While the survey is done by the proper establishment, a separate staff of "classers" examine the soil of every field and place it in a certain class in the following manner:—

The classes and soils actually described (taken from the Joint Report) apply only to the above Ghát districts of the Dakhan[6], but the principle of classification is the same for other districts, only the detail of the rules differs according to local circumstances.

The classer deals separately with—

(1) Unirrigated or jiráyat (jerayet) land.

(2) Rice land.

[5] Code, section 45. I have not in this chapter taken any notice of the assessments of sites in towns, &c. Chapter X of the Code must be consulted, if necessary, by the student for himself.

[6] In Bombay we have (apart from Sindh) (1) Guzarát, (2) Khandesh, (3) the Dakhan, including Násik, Poona, Ahmadnagar, Sátára, Belgám, Kaládgi, Dhárwár, and Sholapur, (4) the Konkan (comprising the below Ghát districts—Thána, Kolába, and Ratnagiri) and North Kanára.

(3) **Garden land called bághâyat (begayet), which is motásthal if watered from wells, the water being raised by buckets; and pátásthal if from tanks or dams, the water being brought on by small water-courses**[7].

Rice land grows nothing but rice, though some garden land may grow rice also.

Rice land may be entirely irrigated by rain or by artificial means.

Commencing then with jiráyat (always taking the Dakhan rules as an example), it was found by experience that soils could be graded into three orders—(1) fine, uniform black; (2) coarser, red; (3) "barad," or light soil.

Three feet (or 1¾ cubits) is the maximum depth of soil which it is of any importance on agricultural grounds to consider; within that limit, however, the value of each soil varies with its depth; and the gradations are fixed from 1¾ cubits to ¼ of a cubit, with less than which, land of any kind is not culturable at all.

The soil of each order will thus require seven classes—1¾, 1½, 1¼, 1, ¾, ½, and ¼; but as soils of ½ and ¼ cubit depth in the poorest order, are lower valued than any others, two additional classes were added; and for some years past a tenth class has been recognised, to be used for the poorest soil of all.

The best class in the highest order is relatively valued as *one whole*, or 16 anas in the rupee, the second at 14, and so on, and the lowest at 4½ anas[8]. The best class in the second order is valued at 14 anas, and so on, down to the lowest at 3 anas. The best soil of the third class rarely or never exceeds one cubit in depth, so that the highest class is valued at 6 anas and the lowest at 2.

[7] Whence the name. "Mot" is a large bucket, "pát" is a raised watercourse.

[8] It may be necessary to remind the student unfamiliar with Bombay that these numbers have nothing to do with an actual money rate for assessment. They are relative numbers only. If, for example, the actual highest rate fixed for 1st class soil was Rs. 3 an acre, the 16-ana land would pay Rs. 3, the 12-ana land ¾ths of Rs. 3 or Rs. 2-4, and so on.

This will appear from the following table :—

Class.	Value.	First order, black.	Second order, red.	Third order, light.
	Anas.	Cbts. depth.	Depth.	Depth.
1	16	1¾	...	...
2	14	1½	1¾	...
3	12	1¼	1½	...
4	10	1	1¼	...
5	8	¾	1	...
6	6	½	¾	1
7	4½	¼	½	¾
8	3	...	¼	½
9	2	...	...	¼
10	1	...	...	...

§ 2.—*Accidents affecting soils.*

Then, besides each order of soil being in a particular class according to depth, there are *accidental circumstances* which, again, depreciate the value. These have been found in practice to be seven in number :—

1. Admixture of nodules of limestone.
2. Admixture of sand.
3. Sloping surface.
4. Want of cohesion.
5. Impermeability to water.
6. Exposure to scouring from flow of water in the rains.
7. Excessive moisture from surface springs.

Each of these accidents is held to lower any soil by one class, and if it occurs in excess, by two classes.

Certain marks are used to denote these accidents.

§ 3.—*Method of recording class and relative value of land.*

The classer now makes a sketch of the field on a piece of paper, and after studying the ground on the spot, he determines to divide

the sketch into a number of compartments of equal area. The number of spaces or compartments necessary is fixed by local orders according to the variability of the soil. Usually they average about 1 or 2 acres each. It is a general rule that, however small the field or survey number may be, at least two compartments are to be made.

Here, for instance, is such a sketch—[9]

Compt. 1	2	3	4
7 ¾ ···	4 ʌʌ 1¾ ▬ ·	3 ≈ 1¼ ·	2 ∴ 1¾ ·
6 1 ···	5 1 ··	4 ʌ 1½ ··	3 V 1¾ · ·
5	6	7	8

Beginning at the lower left-hand corner of each square, the dots indicate the order of soil, *one* being the best (fine black), two being the *red*, and *three* the poor soil.

The numbers 1, ¾, &c., just above, mean the depth. Now let us take the first compartment. The soil is poor (three dots), and being ¾ of a cubit deep, by reference to the above table, it is in the 7th class; hence the class of this is marked 7 in the upper corner.

The No. (2) is of the 1st order, and is 1¾ cubits deep, so that it would have been in the 1st class, but it has some accidental defects. It is impervious to water (ʌ) in a double degree; the mark is repeated twice; and it is also liable to be swept over by drainage water (▬); hence, as each defect lowers it one class, it has to come down from the 1st to the 4th class, and the figure 4 is entered.

[9] The figures are imaginary; but in the Dakhan the soil is so exceedingly variable that varieties from class 1 to class 9 or even 10 may occur in one field, perhaps of no larger extent than 5 acres.

In the same way we find the whole 8 compartments of the sketch give—

				Anas.
1 = 3rd	order	7th	class =	4½
2 = 1st	"	4th	" =	10
3 = 1st	"	3rd	" =	12
4 = 1st	"	2nd	" =	14
5 = 3rd	"	6th	" =	6
6 = 2nd	"	5th	" =	8
7 = 2nd	"	4th	" =	10
8 = 1st	"	3rd	" =	12

Total 76½ anas, or an average of 9 anas 6 pie for the whole field. As regards soil, then, this field will bear $\frac{9\frac{1}{2}}{16}$ of the maximum or full rate of assessment, whatever it is.

§ 4.—*Addition for irrigation.*

Rice lands and irrigated lands have to be classified in this way as regards their soil or natural unirrigated aspect; but they require further examination to test the effect of the well or other means of irrigation, which may result in their being assessed with an addition over and above the unirrigated rate, and the addition will be the full or maximum, or a part only, according to the character and value of the means of irrigation.

The area of *irrigated land* is separately measured, for it may be that in one survey number part is irrigated and part unirrigated. Tables can be made out showing the value to be assigned to wells according to the supply of water in the well, the depth, quality of water, sufficiency of extra land around the well to allow a rotation of wet and dry crops, and the distance of the garden from the village which affects the cost of manuring[10].

[10] The following paragraphs from the Joint Report explain the subject:—

"Of these elements, the supply of water in the well is of most importance, and should be determined by an examination of the well, and enquiries of the villagers, in addition to a consideration of the nature of the crops grown, and the extent of land under irrigation. This is the most difficult and uncertain operation connected with the valuation of the garden, especially in the case of wells which have fallen into disuse, and, therefore, that to which attention should be particularly directed in testing the estimate of the classer, and fixing the assessment of the garden. The remaining elements admit of being determined with accuracy.

"In deducing the relative values of gardens from a consideration of all these elements, which should be separately recorded by the classer, it would greatly facilitate the operations, were the extent of land watered always in proportion to

It is obvious that the rate to be added to the soil class-value may be applied to the whole acreage of the field; or if the irrigation does not cover the whole, a fair number of acres is calculated which it is estimated the well waters; this number depends on the capacity and water-supply of the well. This rate can then be adopted at its full figure, or reduced by the consideration that the well is very deep, that the water is brackish, or that it is far away from the village, so that the profit of irrigation is reduced by the difficulty of getting manure, which is the complement of garden cultivation.

Rice land[1] requires special rates, even when not artificially irrigated, because it is different in character from ordinary jiráyat land.

the supply of water in the well. But it is not so, as in many instances the extent capable of being watered is limited by the dimensions of the field in which the well is situated, or the portion of it at a sufficiently low level; and in others, supposing the capacity of the well to be the same, and the land under it abundant, the surface water will be more or less extensive, as the cultivator finds it advantageous to grow the superior products which require little space, but constant irrigation, or the inferior garden crops, which occupy a more extended surface, but require comparatively little water.

"Wherever the extent of land capable of being watered is not limited by the dimensions of the field, the most convenient method of determining the portion of it to be assessed as garden land, is to allot a certain number of acres to the well in proportion to its capacity. By this means, the most important element of all is disposed of, and our attention in fixing the rate per acre restricted to a consideration of the remaining elements which are of a more definite nature.

"The relative importance of these elements varies so much in different parts of the country, that we find ourselves unable, after a careful examination of the subject, to frame a rule for determining the value to be attached to each, and the consequent effect it should have upon the rate of assessment under all circumstances. It must be left to the judgment of the superintending officer to determine the weight to be assigned to each circumstance affecting the value of garden land, and this determined it will be easy to form tables or rules for deducing from these the relative values of garden land under every variety of circumstance."

[1] On this subject the Joint Report states as follows:—

"In rice, as in other irrigated lands, the chief points to be considered are the supply of water, the nature of the soil, and facilities for manuring. The supply of water is often wholly, and always to a great extent, dependent on the ordinary rains. In some parts of the country, to guard against the effects of intervals of dry weather occurring in the rainy season, small tanks are formed from which the

§ 5.—*Assessment rates.*

When the classer has classified the soil according to its nature and prepared tables showing the requisite facts regarding the irrigation of "bágháyat" land, and those regarding rice, the Superintendent of Survey, as assessor, has now to adopt actual rates.

He has to ascertain—

(1) the full or 16-ana rate for dry cultivation, and for other lands considered in their unirrigated aspect;

(2) the addition he will make to form suitable "irrigated" rates;

(3) the additions he will make to get his rice-land rates.

This he has to do by aid of careful local inspection, and by taking into consideration all the circumstances with which the classer has nothing to do (whose business is only with local facts of soil, water, &c.), namely, the climate, the facilities for market, the productiveness of the land, and so forth. He has also here the aid of figures compiled, just as in any other settlement; he has the rates of former Native and British settlements; he sees whether they have been paid easily, or with much compulsion and large

rice may be irrigated for a limited period. In estimating the supply of water, there are two distinct circumstances, therefore, to be considered, *viz.*, the inherent moisture resulting from the position of the field, and the extraneous aid derived from tanks or from channels cut to divert the water from the upper slopes into the rice grounds below. The weight to be given to each of these elements, in the classification of the supply of water, depends so much upon local peculiarities, that we feel it impossible to frame a system of universal application; and consequently the determination of this point must be left to the judgment of the superintending officer. All that we can do is to indicate the principles according to which, as we conceive, the operation should proceed.

"The classification of the soil should be effected by a system similar in principle to that already described, though modified in details to meet the peculiarities of different districts. But the circumstances of the rice countries to which our operations have yet extended appear to vary so much, that we have not been able to agree upon any detailed rules for the classification that would be suitable to all.

"The facilities for manuring rice lands will be determined, as in the case of dry-crop soils, by distance from village, or the locality from which manure is procurable."

balances; he considers whether rates that would be high then, would be, owing to changed circumstances, easy now.

The Revenue-officers from time to time make experiments as to outturn of crops, and the assessor can make use of them.

§ 6.—*Maximum or full rates.*

He then takes certain tracts of country which he considers can bear uniform rates and fixes a maximum for each, which represent his full or 16 ana rates[2].

[2] The Joint Report should be quoted *verbatim* on this subject :—

" * * * * * It now remains for us to point out what we deem to be the best mode of fixing the absolute amount of assessment to be so distributed. The first question for consideration is the extent of territory for which a uniform standard of assessment should be fixed. This will depend upon the influences we admit into consideration with a view to determine the point. Among the most important of these influences may be ranked climate, position with respect to markets, agricultural skill, and the actual condition of the cultivators. The first of these may be considered permanent; the second and third less so; and the fourth, in a great measure, temporary. And as our settlements are intended to be of considerable duration, there is an obvious advantage in regulating the assessment by considerations of a permanent character, or, at least, such as are not likely to undergo any very material change during the term of years (generally thirty) for which it is to endure.

" In determining, then, upon the extent of country to be assessed at uniform rates, we are of opinion that the more permanent distinctions of climate, markets and husbandry should receive our chief attention. We should not think of imposing different rates of assessment on a tract of country similarly situated in respect of these three points, in consequence of the actual condition of the cultivators varying in different parts of it.

* * * * * * * *

" Each collectorate being divided into districts (talukas) of which the management and records are distinct, it is an obvious advantage to consider the assessment of each of these divisions separately. And were the points bearing on the distribution of the Government demand alike in all parts of any such division, one standard of assessment would be suitable for the whole. But this is seldom the case; and there is usually such marked distinction between different portions of the same district, as to require the assessment to be regulated with reference to these. The first question, then, in proceeding to the assessment of a district, is to ascertain whether such distinctions exist, and to define the limits over which they prevail. This, however, will seldom be a task of much difficulty, or involving any very minute investigations; as marked differences only, calling for an alteration in the rates of assessment, require notice; and within the limits of a single district three to four classes of villages would generally be found ample for this purpose.

For example, on looking through the assessment report of the Indápur táluka of Poona, already alluded to, I find that a general maximum jiráyat rate of one rupee per acre was taken as fair;

"The relative values of the fields of each village having been determined from the classification of soils, the command of water for irrigation, or other extrinsic circumstances, and the villages of a district arranged into groups, according to their respective advantages of climate, markets, &c., it only remains, in order to complete the settlement, to fix the absolute amount of assessment to be levied from the whole.

"The determination of this point is, perhaps, the most important and difficult operation connected with the survey, and requires, beyond all others, the exercise of great judgment and discrimination on the part of the officer on whom it devolves. The first requisite is to obtain a clear understanding of the nature and effects of our past management of the district, which will be best arrived at by an examination and comparison of the annual revenue settlements of as many previous years as trustworthy data may be procurable for, and from local enquiries of the people, during the progress of the survey. The information collected on the subject of past revenue settlements should be so arranged as to enable us to trace with facility the mutual influence upon each other of the assessments, the collections, and the cultivation.

"This, in our opinion, can best be done by the aid of diagrams, constructed so as to exhibit, in contiguous columns, by linear proportions, the amount and fluctuations of the assessment, collections, and cultivation, for each of the years to which they relate, so as to convey to the mind clear and definite conceptions of the subject, such as it is scarcely possible to obtain from figured statements, even after the most laborious and attentive study. The information to be embodied in the diagram best suited for our purpose should be restricted to the land of the district subject to the full assessment; the extent of this cultivated in each year, the assessment on the same, and the portion of the assessment actually realised.

* * * * * * * *

"Furthermore, to assist in tracing the causes to which the prosperity or decline of villages, or tracts containing several villages, are to be attributed, independent statements of the annual revenue settlements of each village should be prepared; and from these, again, a general statement for the whole district, or any portion of it should be framed, and its accuracy tested by a comparison with the general accounts of the taluka, and from the returns so prepared and corrected, the diagrams should finally be constructed. The nature and amount of the various items of land revenue and haqs (holdings revenue-free or at reduced rates) excluded from the diagram, should be separately noted, and taken into account in considering the financial results of the proposed assesment.

"And, finally, with the view of affording the fullest information on this important subject, detailed figured statements should be furnished, exhibiting the source and amount of every item of revenue hitherto derived from land of every description, whether Government or alienated, comprised within the limits of the villages for which an assessment is proposed.

"The information thus collected and exhibited, with that obtained by local enquiries into the past history of the district, will generally enable us to trace the

but Indápur itself had a very good market for its produce, so the land in a group round the town was raised to Re. 1-2. Then, in parts of the taluka certain groups of villages were badly off as regards communication, and still more so as regards the steadiness of the rainfall average, so these are grouped into tracts paying 14 anas only, or even 12 anas; in other places there was a fertilising overflow of the river which bounds the taluka, and so improved the conditions of agriculture, rendering them comparatively independent of rainfall, the general rate was there raised to Re. 1-8 per acre.

§ 7.—*Application of the rates.*

These rates being fixed, the classer's data could be brought to bear: the fields that showed the 16-ana class would pay Re. 1-2, the 14-ana class, Re. 1, &c., according to the group they were in; those that were in the 2-ana class would pay one-eighth of the rate. Fields that were irrigated by wells[3] would have certain rates added on to represent the well, the rates being added to the number of acres considered to be irrigated, and the full rate or a part being added according to the scale given in the tables showing the facts regarding irrigation facilities.

Rice land would be similarly dealt with as regards the rates.

It is then easy to test these rates by comparing them with former assessments and taking into consideration the general state

causes which have affected its past condition; and a knowledge of these, aided by a comparison of the capabilities of the district with those of others in its neighbourhood, will lead to a satisfactory conclusion regarding the amount of assessment to be imposed.

"But instead of a particular sum at which a district should be assessed, it amounts to the same thing, and is more convenient, to determine the rates to be imposed on the several descriptions of soil and culture contained within its limits, so as to produce the amount in question. And to do this, it is only requisite to fix the maximum rates for the different descriptions of cultivation, when, of course, all the inferior rates will be at once deducible from the relative values of our classification scales."

[3] At a revision, a well is an improvement made at the cost of the occupant, and he therefore gets the benefit without addition for the term of revised settlement; but here my object is to speak of the general plan.

of the country and whether the increase percentage produced by the new rates is excessive with reference to improved roads, railways, extent of population, and facilities for export[4]. The selling price of grain is also carefully considered together with the yield of the land: this affords a good means of comparison.

§ 8.—*Rules in other parts of the Presidency.*

The rules described are suitable to the Dakhan districts, but though the details differ, the principle is the same in other parts of the Presidency. In the Konkan, for example, the rainfall is so abundant that soil depth is of no consequence; in Sindh it is uniformly of great depth; but everywhere the rules lay down the observance of well-known classes of soil having different productive capabilities, both with water and without[5].

§ 9.—*Method of working.*

The work of soil classification is very rapidly done, and so accurately, that test classifications do not differ by more than 6 or 7 pie in a maximum valuation of 1 rupee. The classification will not take more than 20 to 25 minutes for a 20-acre field, and 7 or 8 fields will be done in a day by a classer, of whom 13 or 14 form the establishment of one Assistant Superintendent. The establishment will get over 45,000 to 50,000 acres of plain country in a month. The Assistant Superintendent tests from 5 to 15 per cent. himself by doing the work over, without reference to what has been recorded by the native classer, and it is surprising how small the corrections are as a rule.

It will be observed that, under the Bombay system, no less than any other, the actual fixing of rates is a matter for the Settlement

[4] For example, in Indápur, the making of roads and the introduction of carts, which had before been almost unknown, made the people much better off, and a much larger return was obtained from agriculture.

[5] Thus, in a recent settlement of the Morad taluka in Haidarábád (Sindh), I notice "river kachi" taken as an order of soil, and this is classified into (1) land drill-sown, aided by wheel to raise water; (2) land simply drill-sown; (3) land; bearing wheat or barley, broadcast; (4) land roughly ploughed.

Officer or assessor; it is dependent on a consideration of circumstances, on wise calculation, knowledge and experience; but when once the general rates are determined, they are applied to each field by an arithmetical process, resulting from the classer's fractional valuation of each.

The whole assessment is not made by rule of thumb, as is sometimes supposed; it is a matter of estimate by experienced men, just as in Upper India; but each field has a relative value, fixed according to rules of classification, and the application of the rate to the field, whether the full rate or only a fraction of it, follows exactly and regularly from the classification.

The value of the system consists in this, that the soil classification and record of facts about wells and rice-irrigation can be so easily and satisfactorily checked, and that great experience is gained by the trained staff who are constantly employed as classers. No system can dispense with the assessor's (as distinct from the classer's) personal judgment, or exclude altogether an element of estimate or guessing; but this system leaves as little as possible to estimate, and when the rate is determined, applies it by uniform and exact methods to each field.

§ 10.—*Settlement of alienated lands.*

Alienated lands (as they are called in Bombay), that is, revenue-free grants or grants held on special terms, are not, as an entire class, assessed. But the Code gives power to survey the villages as regards their boundaries and to settle disputes regarding those boundaries. There may be an estate, or group of lands of considerable size, alienated, and there may be merely alienated fields or groups of fields in Government lands; or, possibly, Government may have a share in alienated lands. In the former case Government would ordinarily not interfere: the grantee would make his own arrangements with the occupants, who, in fact, pay revenue to him instead of to Government. In some cases, however, the inámdár will request the survey to determine the assessment; and then, if he accepts the rates, these are binding on him as regards the occu-

pants; and Government pays the expense of the survey[6]. In other cases, however, the lands would be assessed like the adjoining fields, only the assessment would not be levied, or only so far as Government had a share in it.

But in such lands the assessment should be known, because the local cess is levied on the basis of it.

The only local cess (the one-ana local cess) is devoted—one-third to education and two-thirds to district roads.

Lands belonging to the 'watan' of the hereditary village officials (and now held conjointly on joint succession by the present occupant as member of a watandárí family) were usually charged by the Maráthá Government with a 'jodí,' or quit-rent, often sufficiently heavy. In all cases watan lands are now assessed to a sum sufficient to provide a remuneration for the actual office-holder, which remuneration is calculated on the basis of a certain percentage of the revenue of the village. Should the full survey assessment be not sufficient to cover this, the balance is paid by Government.

§ 11.—*Revision of Settlement.*

When the period of settlement comes to an end the land is re-settled. This, in Bombay, is always called a "revision settlement."

It is generally assumed that a re-survey and classification of soil will not be necessary at revision; but although this is true as regards a general re-survey, in practice a good deal of work of this class is found necessary.

The Indápur revision, for example, was one in which, owing to peculiar circumstances, a re-survey and classification were found to be unavoidable.

It is a cardinal principle of revision that no increased assessment is imposed, consequent on improvements made from private resources and capital during the currency of the settlement[7]; but

[6] See on this subject Nairne's Handbook, Chap. XXV, page 364, &c.
[7] See Code, section 106.

only with reference to improvements made at the cost of Government, or with reference to natural advantages when private improvements have merely created the means of utilising such advantages.

Consequently, if, during the currency of a settlement, a well has been constructed at revision, an additional assessment will not be imposed for the well; the land will merely pay at the rate of unirrigated land, the benefit of the well being reaped by the maker for the term of the revised settlement[8].

The improvements and changes, however, which may affect the assessment will often necessitate, the revision of the groups, which bear uniform maximum or full rates. The chief points for consideration in this re-grouping of villages for the establishment of new assessment rates, will be—the state of present communications as compared with those existing at the time of the original settlement, and the establishment of new markets, or the decline of those which were the principal ones when the first grouping took place. Climatic differences will probably not alter, but they may have been neglected, and thus on revision they must be taken into consideration[9].

The assessment of land, which has been increased in value by building, quarrying, &c., may be enhanced, because, though the immediate work may be due to private enterprise, the general value of the land and its being in demand for such non-remunerative purposes has greatly been brought about mainly at the expense of the State.

§ 12.—*The Survey Department.*

The following concise account of the constitution of the Survey and Settlement Department in the Bombay Presidency is taken from Mr. Stack's Memorandum :—

"As at present constituted, the Survey and Settlement Department is under one Commissioner for the whole Presidency, including Sindh. Each particular survey is under the direction of a Superintendent, subordinate to whom are several Assistant Superintendents, having charge of parties of measurers and

[8] Code, sections 106, 107.

[9] See Report on Revision of Indápur Taluka, paras. 129—42.

classers. The operations of measuring and classing are conducted, as a rule, by separate establishments, and, generally, the classification of a district follows the measurement at an interval of one season. Every detail of the survey operations is closely supervised and tested by the Assistant Superintendents, who are European officers. On the Superintendent devolves, besides the general control of the survey, the duty of fixing the rates of assessment, submitting the proposals relating to them through the Survey Commissioner to Government, and introducing the settlement when sanctioned. The Superintendent submits his proposals regarding the assessment of a taluka to the Collector, who forwards them with his remarks to the Survey Commissioner, who again forwards the proposals with his observations to the Commissioner of the Division, who submits the whole correspondence with his opinion to Government. In many cases, and especially when there is any difficult point involved, the Superintendent consults the Survey Commissioner regarding the details of his proposals before submitting them in formal shape to the Collector. In the introduction of the assessments, the Assistant Collector in charge of the taluka is usually associated with the Superintendent. It has always been the practice to include no larger area than a single taluka in a proposal for settlement, and frequently the area is very much smaller, comprising only 10 or 12 villages.

"A peculiarity of the Bombay settlement system is its purely technical character. In other provinces, Settlement Officers are selected from the civil staff of the province; but in Bombay 'there is not at the present moment an officer in the Civil Service who has done a day's practical work in the Settlement Department, or has any real knowledge of the detail of its operations.'(a) This peculiarity has operated to the prejudice of the Settlement Department.

"Act I of 1865 was passed to legalise the survey and settlement after it had been twenty-seven years in operation. That Act was amended by Act IV of 1868. Both these Acts have now been repealed by the Bombay Land-revenue Code (Act V of 1879, B.C.), which embodies the whole of their provisions, and is the existing law of survey and settlement throughout the province.

"The following table shows the time occupied in making the settlements now current in the various districts, and the dates on which those settlements expire. The time occupied in making the settlements has been reckoned from the beginning of survey, except in the districts marked with an asterisk, where the initial dates are those of the first introduction of the revised assessments, the survey dates not being ascertainable. Revised settlements are distinguished by the letter R.

(a) Survey and Settlement Commissioner's No. 232, dated 1st March 1880, to the Bombay Government, para. 47.

DISTRICT.	Duration of settlement operations.	Date of expiry of settlement
Ahmadábád	1851 to 1862	1866 to 1887.
Kairá	1857 " 1868	1892-93.
Surát	1859 " 1873	1894-95.

District.	Duration of settlement operations.		Date of expiry of settlement.
Baroch (Broach) . . .	1863 to 1877		1900-01
Panch Maháls . . .	1865 " 1879		1900-01
Khandesh	1854 " 1870		1884-85
Satára	1855 " 1864		1884-85
Belgám	1849 " 1857		1878 to 1884.
Ahmadnagar . . .	1845 " 1852		1879 " 1883.
Násik (R)	*1871 " 1880	(unfinished)	1902-03.*b*
Dhárwár (R) . . .	*1874 " 1880		1904 to 1910.
Kaládgi (R)	*1874 " 1878	(do.)	1904-05 (*b*)
Poona (R)	*1867 " 1880	(do.)	1897-98.(*b*)
Sholapur (R) . . .	*1872 " 1875	(do.)	1902-03.(*b*)
Thána	1854 " 1867		1884-85.
Kolába	1854 " 1867		1886-87.
Ratnágiri	1866 " 1876	(do.)	1894-95.
Kanára	1863 " 1880		1893-94.

(*b*) These are the *earliest* dates of expiry of the revised settlements.

" The two districts settled before 1860 (Belgám and Ahmadnagar) were disposed of much more rapidly than those subsequently taken in hand. Survey and settlement work has steadily tended to become more and more exact, elaborate, and tedious. The average duration of settlement operations seems to be about twelve or fourteen years.

" The term of settlement is thirty years in most districts, but where the settlement of a whole district expires at once (as in Surát, for instance), the latest settled talukas have a considerably shorter period. Some backward tracts have been settled for twenty years only.* The revised settlements are all for thirty years."

§ 13.—*Settlement of Sindh.*

The land-revenue settlement is also described as follows[10]: (the frontier districts have not been settled and are not included in this account)—

" Upon the introduction of civil administration in 1847, a seven years' settlement was made by measurement of crops and commutation of the Government share at assumed prices on raiyati lands, and by leasing out the zamíndárí estates at lump rents. Prices subsequently fell, the assessments proved heavy, and the settlement expired in 1853-54 amidst general demands for reversion to the old

[10] Selections from Records of Government, No. XVIII, 1855, pages 8, 9—Papers relating to Revenue Survey in Sindh. 1875 page 48.

Native system of dividing the crop and taking revenue in kind. At the same time, the revenue records were exceedingly imperfect. There were no village maps, nor even any taluka lists of villages; boundaries were undefined, and land registers were unknown, all existing information being exhibited under the name of the person by whom, not of the place for which, revenue was to be paid. It was therefore determined to institute a 'rough survey and settlement,' as preliminary to a complete revenue survey and settlement at some future time. Settlement Officers were to demarcate village boundaries for the Topographical Survey then at work in Sindh, and were then to measure the fields, fill in the village maps, classify the soils, and make the settlement.

"This 'rough survey and settlement' went on till 1862. By that time about one-third of the provinces had been surveyed for settlement purposes, at a cost of 8¼ lakhs; but no settlements had been made, the Settlement Officers having been fully occupied in demarcating boundaries for the Topographical Survey, and afterwards making their own interior survey of the villages. In the absence of precise rules, the system followed had more or less modelled itself upon the Dakhan revenue survey, and the assimilation was now made complete by the deputation in 1862 of a Bombay Settlement Officer to draw up a scheme of classification and settlement. The rules then framed still form the basis of settlement operations in Sindh, though in practice they have been subjected to great and material modification as regards details, so that the present form of settlement differs largely from that adopted about 1864-65, the failure of which became more and more evident eight or ten years later. The organisation of the department was completed by 1864-65, and regular survey and settlement work has been going on ever since. At first there were two Superintendents, one upon the right bank, and the other on the left bank of the Indus; but a single officer has had charge of the department since 1874.

"Cultivation in Sindh is almost entirely dependent upon irrigation. A certain area of land, composed of rocky detritus, along the skirts of the hills, can be cultivated with the help only of rain; but even lands of this kind are generally dependent upon hill torrents, which are caught in enclosed fields and allowed to soak into the soil. Excepting these tracts, the province consists generally of alluvial deposit, with a greater or less admixture of sand. The classification rules of 1862 divided this soil into four orders, differing from each other by their proportion of sand, and these again are liable to be degraded by 'faults,' *viz.*, the presence of salt, a sandy substratum, or an uneven surface. The second stage of the classification process relates to the nature and quality of the water-supply. The greater part of Sindh is watered by canals filled by the rising of the Indus. They are constructed so as to receive water during the inundation season, and most of them lose their supply when the river falls to low-water mark. Some of them are under the Irrigation Department, others are managed by the zamíndárs. In the latter case, the zamíndárs are bound to do the annual cleaning out and repairs, and the expenses are recovered by a special cess, if the Government has to step in and take the duty out of their hands. Irrigation from these canals is either by flow or by lift, that is, by the Persian

wheel. Besides the canal-water area, a considerable extent of country, especially in the Shikárpur district, is rendered capable of cultivation by natural flooding. These floods are quite beyond control, and often do more harm than good; but where they are tolerably certain, as is the case with the Manchar lake in the Karáchi district, they are very favourable to the growth of rabi crops, especially wheat, on the land which has been temporarily submerged. Thus, in making the settlement, water-supply has to be classed under one of three heads, *viz.*, flow (*mok*), lift (*charkhi*), or floods (*sailábi*), and then further classified according to the sufficiency and constancy of the flow, the expense incurred in bringing the water by lift to the field, and the certainty and duration of the flooding.

Section IV.—The Records of Settlement.

The Code is remarkably simple in its provisions on this subject.

The village maps are among the most important records. Accompanying these is the "Settlement Register," showing the area and assessment of each survey number, together with the name of the registered occupant of the number [1].

The Code leaves it to the Local Government to prescribe such other records as may be necessary. One record is, indeed, expressly mentioned in an earlier section of the Code[2]—a record of all alienated lands—that is, what would be called in Upper India 'lákhiráj' lands, lands of which the Government right to revenue has been wholly, or within certain limits, alienated or granted away.

A third record is mentioned in Nairne's Handbook, called the "botkhet," which is a detailed record of each holding—that is, each field or group of fields held on a separate interest or a separate tenure by one person or more than one, with detail of shares, &c.

These registers are lodged by the survey officers with the Collector.

Copies are given to each landholder of the record of his holding; and in khot villages (to the khot), such papers as are necessary to enable him to administer the estate properly.

[1] Code, section 108. | [2] Section 58.

The original registers when complete, are not altered, except to correct clerical errors or mistakes admitted by the parties interested[3]. Mistakes as to a wrong entry of a registered occupant's name by error, fraud, or collusion, may be corrected within ten years, even if the parties do not admit it; but all subsequent changes by succession, partition, transfer, &c., are not made in the settlement registers themselves, but in separate village registers kept up for the purpose.

There is no place in the Bombay system for a 'Record of rights,' such as is noticed in the settlement papers of Upper India. There being, as a matter of principle or general rule, no intermediate landlord between the landholder and the State, there is but little room for those questions of sub-proprietary right which need such careful reservation in those settlements. In special cases where there are such superior rights, as in khoti villages, a record is made of the subordinate rights as specially provided by the Khoti Act (Bombay) of 1880. There also other cases of special tenures, such as the taluqdárs of Ahmadábád, which are dealt with in a special Act (VI of 1862).

SECTION V.—THE LAND TENURES.

§ 1.—*The subject stated. Varieties of tenure.*

The principal form of right in land in the Presidency is, of course, the "survey tenure;" that is, the ordinary tenure under which every landholder appears as the registered occupant of his holding, when he does not hold as a grantee, a sharer in a Narwá village, or under some special form. It is, naturally, the ordinary and most general form of landed right under a raiyatwárí settlement, and, except in those estates where there is a superior owner, as a jagírdár, or taluqdár, or khot, &c., all the earlier tenures of land tend to become practically assimilated under the simple terms of holding as recognised by the Revenue Code.

[3] Code, sections 109, 110.

The great bulk of the villages in the plains part of the Dakhan were, as I have said, of the non-united type—aggregates of separate holdings. In the Konkan also there are only individual holdings, and in them it is not often that anything but an individual right of occupancy can be traced. In the districts of the Guzarát province, in Kairá, Baroch, and Surát, however, villages exhibiting a joint tenure still exist; but even in these, in many cases, the enforcement of the joint responsibility is rare or wholly unknown, and the tendency is naturally for the holdings to become separate. This subject will be dealt with further on.

There are, however, in villages now non-united (and treated as groups of occupants on the survey tenure) some vestiges of a former right in the soil which was of a different nature.

In Khandesh and all the Central Dakhan a tenure called mirási is remembered. The mirásdárs have an original and hereditary claim to the land, and this tenure is distinct from the "gatkuli," which is an inferior tenure of lands[4] which belonged to the village and on which the proprietors had located outsiders. The term "upri" (uparí) is also remembered, showing a distinction between the old soil proprietor and the tenant who had no original proprietary right. Such terms may be explained on the supposition that once the land was possessed by a body of joint owners; probably a group of families descended from a conquering or ruling family who constituted themselves the 'landlords,' the others being 'tenants:' or it may be that the mirásidárs are the original founders (not necessarily a joint body) and the others are later settlers looked on as subordinate to the first. Under the modern raiyatwárí system, however, no practical difference

[4] 'Gatkul' means literally the land of a "family" which has "deserted" or left the place, but is applied to all the lands in a village not being the direct holdings of the mirásdár. In Maráthá times, when the joint claim to an area of waste inside the village boundaries was little respected, the rulers would often grant the waste, treating it as at the disposal of the State, and the holder would then get it as 'gatkul' land.

exists. The holder on gatkul tenure is the registered occupant of the fields in his holding, no less than the mirásdár in his[5].

There are, indeed, cases of superior tenures or right in two grades[6], dating back from the Rájput conquests and otherwise, but these are almost entirely confined to certain localities.

There are also in all parts lands held on a tenure, already described in the chapter on the Central Provinces. I allude to the 'haq' or 'watan' lands acquired originally in virtue of his office by the patel or other watandár village officer. Such lands pass by inheritance to the members of the family, so that many occupancies may originate in this way. As noticed in the chapter on Assessments, the watan may now be held revenue-free, or subject only to a limited assessment.

The Maráthá Government did not, as a rule, interfere with landed rights. When its power was firmly established, it dealt with the individual landholder, caring, indeed, very little for the nature of his tenure, and treating all tenures very much alike. Thereconsequently was no opportunity for the growth of grades of proprietary right, and for conflicts between original proprietors and the later growth of powerful individuals who had absorbed the profits and acquired the position of proprietor; and where such had at one time grown up, as in the case of the mírásí rights, the system tended to restore all classes to a level.

The villages retained their hereditary patels and their village officials, with their hereditary emoluments and their *watan*, and now, whether the holding was originally by mirásí right or was a watan, it is held by the occupancy tenure of the Code.

[5] Unless, indeed, the mirásdár has not a more unrestricted right to trees on his holding (see Nairne, Chapter XXV, pages 367, 368). The mirásdár was also allowed a certain consideration under the Maráthá rule: thus a right of re-entry was recognised when a mirásdár had been obliged to abandon his land.

[6] And then the "occupant" is the person who has the highest order of rights (Code, definition clause).

§ 2.—*The survey tenure.*

The first form of tenure to be described is, then, the ordinary tenure of landholders who have no special grant, or other peculiarity in the title by which they are connected with the soil. It will be observed that the Code does not enunciate any theory of proprietary right: it does not call the landholder proprietor, but it describes in Chapter VI what the practical incidents of his right are. The "right of occupancy" is itself a property, but that is quite different to saying that the occupant is owner of the soil.

The student should also read the paragraph in Chapter II, section II of this book, headed 'Occupancy Tenure.' I have there more in detail described the limitations which mark the occupant's right.

The right of occupancy (unless expressly limited) is a perpetual right, subject to the payment of the revenue assessment[7] failure to pay this involves the land and everything on it to liability to forfeiture and to all processes for recovery of revenue[8].

It is a heritable and transferable property[9]. It does not[10], in the absence of special facts, give right to mines and mineral products which are reserved[1].

The occupant has a right to erect farm buildings, construct wells or tanks, and make improvements for the purposes of agriculture. But land must not be diverted from agricultural purposes without the Collector's permission; and the Collector may, subject to the orders of Government, require the payment of a fine for any such concession, in addition to any change in the assessment which may be legally made consequent on the different use of the land[2]. Neglect to obtain this permission will entail liability to summary eviction.

[7] Code, section 68.
[8] *Id.*, section 56.
[9] *Id.*, section 73.
[10] In unalienated or "Government lands."
[1] Section 69.
[2] Section 65

The occupant may continue to hold the fields he has, as long as he likes, subject, as before stated, to the payment of the assessment; but he can relinquish his entire holding, or any entire survey number, or a recognised share in a survey number, provided he does so by giving written notice[3] to the land revenue officer (mámlatdár or mahál-kari, as the case may be).

If the relinquishment is absolute, the notice must be given before the 31st March (or other date that the Governor in Council may fix), and it will take effect after the close of the current year, and the occupant remains liable for the remainder of the year.

Transfer is dealt with by the Code as a relinquishment, only not absolute, but in favour of a specified person, and this may of course be made at any time. In this case the transferee, or the principal of several joint transferees, must agree in writing to the transfer, and his name is then substituted in the register.

The Code makes further specific provision for the case where a lump assessment is fixed on an aggregate of fields or survey numbers.

As a number is liable to forfeiture if the revenue is not duly paid, there is a power given to a co-occupant tenant or mortgagee to prevent forfeiture by paying up the revenue.

But in all cases where there are several occupants and the registered occupant fails to pay, the Collector must not forfeit the whole; but if he thinks it would be unfair to the other's interest, he can deal with only the defaulting occupant's interest by transferring it to one of the others who pays up.

Just as the occupant can relinquish his holding, so he is at liberty to apply to take up a number or numbers which are unoccupied. All that is needed is that he should submit a written application[4], since any occupation without proper authority is made penal by the law.

[3] Called a "rásináma.

[4] Section 60.

In such cases the right of occupancy may be granted at a price (which shall include the right to all trees not specially reserved), or the right may be put up to auction, which will usually be done where land is much in demand[5].

Only one person is entered as the registered occupant of any number; so that if several persons are co-occupants or co-sharers, one among them will be registered, but the others may apply to have their recognised shares recorded; and when that is done, each recognised sharer is liable only for his own revenue, and his share is treated practically as a separate number, except that it need not be so separately demarcated; and there is the condition about relinquishment to which I have already alluded[6].

On the death of a registered occupant, his eldest son, or other person appearing to be his heir, or the principal among several joint heirs, is entered as registered occupant.

In recording at settlement the person entitled to the occupancy right, the survey officer does not go into any question beyond the bare fact of occupancy. The person in occupation is recognised; if he admits that he is not occupant, but a tenant on behalf of some one else, that person's name will be entered, that is all. If there is a dispute, the parties are referred to the Civil Court, and the survey officer or the Collector (as the case may be) recognises the decision and enters as the registered occupant the person whom the Court's decree declares to be such. The others have then just what rights the decision assigns them.

There may in ordinary cases be two conditions under which there will be a "superior" and an "inferior" landholder. In one case the superior will be a grantee of Government, or taluqdár, or jágírdár, or khot, &c., and the occupants on the land may then become the inferior holders; in the other the superior may be the registered occupant, and the inferior may be his "tenant."

[5] Section 62.

[6] Code, section 95

§ 3.—*Inferior rights.*

Here I may conveniently notice how, in registering the occupants of land, any questions of tenancy or other inferior right are disposed of.

The rules about inferior right are very simple.

If a person admits himself to be, or is decided to be, on the land as a tenant, the *terms of the tenancy* are those of the agreement; and if no agreement appears, the tenancy is presumed to be on the terms of rent payable or services to be rendered, according to the usage of the locality, or failing proof of such usage, according to what is just and reasonable (section 83).

And the *duration of the tenancy* is dealt with on similar principles. If there is no proof of its commencement and of terms agreed on, and no usage as to duration, it is presumed to be co-extensive with the duration of the tenure of the landlord. There is no limit to the landlord's power of eviction or enhancement of rent, except the terms of the agreement or the usage of the locality.

Questions regarding tenant-right can thus be simply and satisfactorily disposed of by the Civil Court if they ever arise.

Annual tenancies, in the absence of proof to the contrary, run from the end of one cultivating season to the end of the next: the cultivating season "may be presumed to end on the 31st March" (section 84).

Annual tenancy is terminable by giving three months' notice on either side.

In the case of superior and inferior occupancy arising from the existence of the taluqdárí or other tenure, or from the land being "alienated," that is, granted by the State to an inámdár, here the relation of the parties again entirely depends on the facts, as determined in the Civil Court if there is a dispute, and by the terms of any special law applicable, as the Khot Act of 1880, the Taluqdárí Tenure Act of 1862, and so forth. The actual occupier of land may admit that the superior is absolute owner, and that he is a tenant on certain terms; or he may claim to be irremovable and bound to

pay only a certain sum, which may or may not be in the power of the superior to alter.

The Revenue Code is only concerned to protect the inferior, by requiring that in all cases where a hereditary patel and village accountant (kulkarní) exist, the payment shall be made through such official; and the superior is liable to penalty if he attempts to receive or collect directly (section 85).

§ 4.—*Narwá and Bhágdárí villages.*

While the "survey tenure" thus described has come to be the really important one in the Presidency, it is at the same time both instructive aud interesting to notice how various other tenures have survived from former days; though such tenures are now confined to certain localities only.

In the first place, in two of the Guzarát districts, Kairá and Baroch, we have instances of the joint-village presenting all the essential features of the North Indian village; and here not in a state of decay, or traceable only through the use of certain terms, but alive and in full vigour[7].

The bhágdárí and narwá villages are really of the same kind, though circumstances have impressed upon them the different names, and have issued in something of a practical distinction. But both are forms of the true joint village. At the present day the term "bhágdárí" is applied to the villages in Baroch, and the narwádárí is that of Kairá (with a few examples in Ahmadábád and Surát).

In both there is a joint responsibility for the entire revenue of the village, as a lump sum, to Government.

And there was this practical distinction[8], that in Baroch, in the bhágdárí village, every field was always separately assessed as in any other village. But the amount of revenue payable by each sharer and sub-sharer did not necessarily correspond to the amount

[7] The narwá villages are described in the well-known paper by Mr. Pedder. Selections from Records, Government of Bombay, No. CXIV (New Series).

[8] Administration Report, 1872-73, p. 57; see also Mr. Pedder's paper, p. 15.

actually assessed on the individual fields in the share or sub-share, but on the proportion which is payable according to the customary scheme of division of burdens and profits in the village. This method of assessment is still kept up, and the shares into which the total burden is distributed are ascertained from a record made at settlement, and called the "phaláwani" register.

In the narwá villages of Kairá there never was a separate field assessment; the revenue was a lump sum arbitrarily imposed by the Maráthá ruler. In British times, the fields have been separately assessed, but still the plan is retained of treating the village as a whole and maintaining the joint responsibility for the total assessment.

Whether the origin of these villages is to be traced to a tribal settlement, or merely to the dismemberment and division of a petty kingdom among the families connected by relationship with the ancient ruler, I am unable to say; but in these villages we have a proprietary body in possession of a certain area; they built the village on a convenient site, called in artisans, gave them houses and bits of land for their support, and so provided the villagers with the means of getting their household pottery, their doorposts and rude furniture, their ploughshares, and their cotton cloth. Then cultivators were located to till the land, which was more than the proprietary families could manage, and thus the village system was perfected. At first all was in common, but soon the different groups separated; the major division held by each section is spoken of as the "gámbhág," and the sub-division, "petabhági." The villages exhibit just the same stages of passage into severalty as elsewhere. In some of the villages (the perfect pattídárí of the North-Western Provinces) all the land is divided into shares. In others (imperfect pattídárí) part is held in shares and part in common (majmún), the revenue and cesses being paid out of the proceeds of the common land. All "pátídárs"[9] or sharers were addressed as "patel," but the head or senior, or principal man among the

[9] Here the form is "páti, pátidár," &c., not "patti," as in the north.

sharers in each patí, had a sort of representative character for the rest, and is spoken of as "múksh-bhágdár," or chief of the sharers, or as "muthádár, the man who puts his "signature" to documents on behalf of the others.

In such a community, Mr. Pedder says, the tenants soon became classified by custom. Those who cultivated the common land (or had been on the land from the times of the founder) were never disturbed, but those employed on the land of the separate sharers (sír holdings as they would be called in North India) were mere farm servants or tenants-at-will. These villages became, in some cases, "narwádárí" in consequence of the revenue-system of the day. The Maráthás never established an orderly rule in these parts, but were in Guzarát mere plunderers; and exactly as in other provinces where their rule was not consolidated, they did not exhibit the prudence and steadiness in revenue matters which they did in provinces under their undisputed sway. As usual in such cases, the villages were made over to revenue farmers. Speculators who agreed to pay a certain sum to the State coffers had full license to get what they could out of the people, over and above that amount. In many villages these farmers soon broke down all distinctions. Every one—tenant and family shareholder alike—had to give up all he could make out of the land, so that all became equal in the burden they had to bear; proprietorship no longer had any value. The people in many cases fled the spot, and the farmers usurped their rights. In Surát there are cases in which the revenue farmer has become the owner of the village, just as we have seen to be the case in the Central Provinces.

The village communities of the narwádárí tenure came under the same oppressive system of revenue-farming, but their inherent strength, or the excellence of the village system, proved itself by enabling them to bear up and survive. The shareholders succeeded in retaining the management of their lands, but no longer could the proceeds of the common land meet the heavy demands of the farmers. They therefore invented the plan of *dividing the assessment*

which had to be made up, by an additional rate to be paid by each "pátídár" according to his share. Each páti was jointly responsible for its share of the narwá, and all the pátís together were jointly responsible for the whole. The amount of the narwá might also in time modify the extent of land held, so that a man's holding came to be according to the amount of narwá he paid, instead of according to his original share as it would stand by the genealogical table.

The bhágdárí villages, then, I take it, were simply those in which a field-to-field assessment was levied, and the sharers bore the burden, not according to the land they held, but according to their ancestral shares. This practically produced no inconvenience when the division of the state was not complete, and a considerable area of land remained common, and its produce was devoted to meeting the revenue burden. In the Kairá villages the form had been, of necessity, altered, since there, the Maráthás abandoned the field assessments and ordered the village to pay a certain lump sum; this they had to provide for among themselves as they best might; and in consequence the old theoretical shares would be modified; the richest men were obliged to pay the most and naturally took more land to compensate them; in time, the narwá formed the measure of rights not the ancestral share. Moreover the system tended to weaken the ancestral connection by necessitating, or at any rate permitting, the introduction of outsiders not originally of the family, who undertook a share of the revenue burden[10].

[10] Mr. Pedder (page 21, section 40, &c.) describes the modern method of settling the villages. All the lands were separately surveyed and their survey-value ascertained; and this revenue valuation of the land was imposed by a new distribution, proportionate to the several "narwás" or shares in the village. If this was less than the old lump assessments, the difference was adjusted by a percentage deduction from the sums paid by cultivators with rights (not being proprietary sharers). The cultivators who pay direct to Government are on the majmún land, and they pay according to their holdings. Consequently the sum which the narwádárs have to make good, according to their shares, is the total survey-valuation, less the amounts paid direct by the cultivators who pay direct to Government as occupants. The shares of each narwádár proprietor are shown, but not the field assessment; only the lump assessment and the share.

The joint village tenures are recognised by Bombay Act V of 1862. A field-to-field assessment is in practice actually made, because if the village should escheat or be sold for arrears of revenue, Government would at once be able to manage the village on the raiyatwárí system, knowing the proper assessment for each field. As long as the village remains joint, the sharers have their portion of the revenue-payment assigned, according to a customary distribution shown in the phaláwaní register. The sharers are responsible jointly and the sub-sharers severally, for the revenue, whether the land is cultivated or not; there is no relinquishing or taking up, as under the survey tenure.

Whenever (as most often happens) *all* the land of the village is not held in "bhágs" and "pátis" of the bhágdárí form, or in holdings according to the narwádárí form, the remaining common or majmún land is treated exactly like any other raiyatwárí land; that is, the revenue of each field shown in the register, is levied from the actual occupant according to his occupation. The occupation may be by the proprietors themselves, but as tenants of the body at large, or it may be by tenants or "inferior holders." The Collector takes the assessed revenue from the holder in either case according to the actual fields in his possession.

The main object of the Act of 1862 was to prevent confusion being introduced by the sale, or mortgage, of the sites for habitation (gabhán), and the homestead land belonging to each share or bhág (apart from the share in the village land), and also to prevent portions of the land other than recognised shares being sold, and so obliterating the ancient and recognised divisions and subdivisions. Power is given to render null and void all such alienations. The people themselves are averse to the breaking up of the joint responsibility[1]. Nevertheless there is a tendency for the holders of land to prefer to pay the survey assessment on the fields

[1] The people, Mr. Pedder says, are unwilling to dissolve their joint-tenure: they would lose their reputation and dignity (*abrú*), and would be unable to marry their sons and daughters as advantageously as they do now, if they did so.

in their holding rather than according to a scheme of ancestral sharing. And it is permitted, if the people choose, to make a joint village raiyatwárí, by giving up any surplus waste to Government; each holder of fields then becomes the registered occupant, responsible only for the assessment of his own holding. As long as the village remains joint, however, the sum fixed for the share and the recognised sub-share, must be made good as a whole, irrespective of whether certain fields are cultivated or not.

It is exceedingly remarkable that though it is *these* villages which are really in character joint, yet they have become so thoroughly "pattidárí" in form, that the people call them *shared* villages (bhágdári), and the term "sanja," *i.e.*, joint or united, is applied to the ordinary village of the country—the non-united village—because there is no "sharing" and division of lands; all are together on the same footing and under one headman.

§ 5.—*Cases of double tenure. Mewásí and Málikí tenures.*

In some parts of Guzarát some villages are held on what is called the "mewásí" tenure, which simply means that certain freebooter Rájput Thákurs or chiefs got hold of the villages in former days, just as the Sikh jágírdárs did in the Cis-Sutlej States of the Panjáb. They established themselves as over-lords, taking a rent from the villagers; and now their descendants form joint bodies, each having major and minor shares according to their position in the genealogical tree, and dividing the rent among them.

In the same way the "málikí" tenure of a few villages is due to the grant of them to certain families called málikzádas, nearly four centuries ago, in the Khásra taluka of the Kairá Collectorate. The Maráthás afterwards made them pay an "udhár jamabandi," or quit-rent, and then, at a later date, levied a further tribute called "ghásdána" (for grain and grass for the troops). These families have now become over-lords in their villages, paying revenue to Government at a certain reduced rate, and taking rent from the villagers.

§ 6.—*Ahmadábád Taluqdárs.*

But a more remarkable case of double tenure is to be found in the western taluqs of Ahmadábád adjoining Káthiáwár. The taluqdár is here by no means to be confused with the proprietor of the same name in Oudh.

Here the tenure is due to the *division* of the districts among the descendants of certain Rájput chiefs.

Each taluqdár is now owner of an estate consisting of one, two, or more villages; and in each estate there are many joint owners or several holders, but all in the position of sharers in the estate and over-lords over the people of the soil who have become their tenants. The tenure is in fact closely analogous to that of the Nairs of Malabar. The proprietary right of the taluqdárs was recognised by Bombay Act VI of 1862. It is, however, limited by special conditions. As is the case in the Ajmer chiefs' tenures, the lands can be mortgaged, they cannot be permanently alienated.

When the taluqdári estate is held by numerous sharers, there is a manager (wahiwatdár) appointed to collect the Government revenue due from the sharers, and there is a joint responsibility. The taluqdári family takes its dues from the land in grain. The crops are divided according to known customs. The taluqdár gets, speaking roughly, one-half.

It may be here mentioned that many families in Guzarát, which once held estates as chiefs, were dispossessed by the Muhammadans, but allowed to hold some portion of estates as "wánta," which is either held rent-free or subject to payment of a "salámi" or tribute-rent.

Here we have, in fact, relics of the old organisation of Rájput chiefs settled as an invading force, not as a *people*. The estates are now dispersed and broken up; and had the work only gone far enough, there would have been only a series of villages, each held by an ancestrally connected joint body,—the descendants of the former chiefs.

§ 7.—*The Khoti tenure.*

Another form of double tenure has arisen from the revenue-farming arrangements of former days. In the Konkan this tenure is known as the khoti tenure[2].

In the Thána Collectorate the "khots" are now in a different position to what they hold in Ratnagiri. There the khot is a mere lease-holder paying a certain revenue to Government, but he does not claim to be actual proprietor of the land. The isáfat tenure is similar, except that here the landholders under the isáfatdár hold on the ordinary survey tenure, while the khoti villages have not been surveyed, and the people have only their own original tenures under the khot, the superiors holding on the súti tenure as it is called, and the inferiors on the gátkuli. On the Coast certain lands are called shrilotri,—they were reclaimed from the sea and embanked, and are owned by the shrilotridárs.

In the Southern Konkan (Kolába and Ratnagiri) the khots were, as in Ratnagiri, originally only revenue farmers of the Maráthá rule. But in this part of the country they grew, on the same principle as the Bengal zamíndár did, to being proprietors of their villages. They consequently now own as superior landlords all the land in the village. Their rights in the waste will be mentioned presently. They have to make good the Government assessment of the estate and can deal with the land as they please, so long as they respect the rights of permanent occupants and other privileged landholders under them. These pay a fixed rent, only liable to increase at a general revision of the settlement. Other cultivators on the estate pay a grain-share to the khot. They are, however, protected

[2] A great deal of mystery was at one time made about this tenure, and a great discussion took place as to what the rights of khots were. The difficulty consisted in determining any general rule, or in applying such a rule to particular cases. On paper it is perfectly easy to describe the khot tenure. There was nothing proprietary in the original character; but the position was one which readily developed into a proprietary form. Each particular case might therefore be in a different stage of development, and the question whether it was yet proprietary or not, could be hotly debated.

in their holdings, only they cannot transfer them. A special Act (I of 1880, Bombay Code) has provided for khoti tenures. The Act primarily applies to the khots of Ratnagiri, and it may be extended to those of the Kolába Collectorate.

This Act recognises the rights of the khot as heritable and transferable, so also is the inferior right of the original cultivators under the khots, called dhárekári. There are other kinds of land-holders, called in the Act quasi-dhárekáris, and locally daspatkári, dupatkári, &c., names which indicate landholders whose tenure is permanent, but who, unlike the dhárekári[3], pay something more than the survey assessment;—their rent-rates are fixed in the schedule appended to the Act, and amount to 2 anas in the rupee more than the assessment in the case of the daspatkári, and to certain weights of grain in kind, for the other classes.

Besides these, all cultivators who have held continually since the revenue year 1845-46 have an occupancy right as tenants, which is heritable but not transferable, as a rule. There may, however, be proof of the existence of a special right of transfer.

As already remarked, the law of succession causes these khot villages in many cases to be owned by several joint-owners or co-sharers. In this case they are jointly and severally liable to Government for the revenue, and they have to appoint a 'managing khot' who is like the lambardár of a North Indian village.

If there has been a partition, the khoti sharers are separately dealt with by the Collector, and become only severally liable for the jama of their share.

All cesses (*phaski, veth*, &c.) are abolished. The khot is liable to pay the Government local fund cess, which he recovers from dhára and quasi-dhára lands, but not from the other holders.

The khot pays a whole lump sum jamá on the village instead of an assessment on each field, and consequently he has the control of waste numbers in his village.

This led to a dispute as to whether Government had the right

[3] See section 33*a* of the Act.

to interfere with forest waste in the village; the dispute was ultimately compromised, and the Act now provides that Government may constitute reserved forests in any waste in a khot village (unless some special grant or sanad prevents it); but that, subject to the performance of any condition for duty or service in connection with the forest, the khot receives one-third of the net profits of the forest[4].

§ 8.—*Alienated lands.*

There were many lands throughout the Bombay Presidency, especially in Muhammadan times and under Hindu chiefs, which were "alienated" by the State, either as jágír lands, held conditionally on military aid or as a reward for political services. Service tenures are called "jágír" or "sarinjám." These latter are found mostly in the Southern Division and in Násik and Khandesh. Grants were also made for "services," *i.e.*, to pay the services of village and pargana officers, for the support of police, &c. There are also religious and personal grants (inám).

In Guzarát, where these lands were numerous, the "service" lands were called "chákaríyat," and charitable grants were "pasáëta.[5]" It did not follow that the *land* was originally granted, only the State revenue; but of course it might happen that the land already was in the occupation of the grantee, or was waste, or was unoccupied, or that the grantee grew into the sole proprietary position, or at any rate into the superior proprietary position. In alienated villages there may therefore be superior and inferior occupants, or occupants (the descendants of the grantee) and mere tenants-at-will cultivating the soil. "Alienated lands" are not always entirely revenue-free (nakra); in some cases they were

[4] Section 41 of the Act.

[5] Administration Report, 1872-73, page 60. When the original grantee's family had sold the land, it was said to be "vachánia," and so a plot of land might be described by a series of names, as "pasaëta, vachánia, salámia," land granted originally in charity, &c., sold to some other person, and made liable to a quit-rent. Religious grants of Hindu origin are "dewasthán."

"salámia," *i.e.*, had to pay a sort of fixed tribute or tax: the Maráthás mposed a "jodi," or quit-rent, often heavy enough, on others.

In Bombay, as elsewhere, great doubt hung over the origin and validity of many of these grants. A systematic enquiry was set on foot under an "Inám Commission" or Alienation Department[6]; but this did not meet with great success. At all events in 1863 Acts II and VII were passed for the summary settlement of inám estates. The main principle involved was that Government consented to forego a special enquiry into the title, if the inámdár chose to accept a summary assessment on the entire estate, as made by the Collector under the Act, and to submit to the conditions of the Act[7]. If the inámdár thought that he could establish his title, he would submit to an enquiry, which might possibly establish his right to lands either absolutely free of revenue payment, or subject to a lighter payment, as "salámia (quit-rent) or udhár jamabandi" (reduced assessment), than the Collector offered. But if he failed, his land was liable to full survey assessment; and in many cases it was profitable to avoid the expense, delay, and trouble of an inquest and to submit to a summary assessment of the estate, on accepting which the alienee got his estate confirmed by 'sanad,' or grant in perpetuity. Some ináms, not under the Summary Settlement Acts, are heritable, but the inámdár's succession is only to actual, not to adopted, heirs.

The estate granted under the Summary Settlement Acts is granted in full proprietary right, and is heritable, transferable, and adoption is allowed[8]. The estate pays revenue survey rates for land which has been surveyed and assessed, and rates agreed on between the Collector and the inámdár for unassessed lands. If

[6] Constituted under the Governor General's Act XI of 1852.

[7] The Acts apply to the districts in which Act XI of 1852 was in force, and to all "ináms" *not* being "political," *i.e.*, jágir or sarinjám grants, nor lands held for service, nor under treaty, nor formerly adjudicated on as "not continuable hereditary."

[8] Bombay Act VII of 1863, section 6.

a quit-rent (jodi), &c., is already payable, the assessment is at this, *plus* one-eighth of the difference between the jodi and the full assessment. The inámdárs are therefore considered entitled to all the waste and forest included in the terms of their summary settlement, unless it was specially agreed that such lands or the trees on the land, were reserved to Government. They are also allowed all land actually in possession, even if in excess of the original grant.

If on receiving a notice to elect between a summary settlement or an enquiry, the enquiry was called for, the Act itself contains rules as to the principles to be observed on enquiry, such as, for example, from what date a title was to be considered as prescriptive; what princes and officials of former Governments were to be considered as empowered to grantináms, so that sanads signed by such princes and officials might be recognised as valid; when adoption could be recognised; and so forth.

The operations of the Inám Commission and of the procedure under the Summary Settlement Acts have resulted in a considerable saving to the State. At the commencement of the enquiry, the annual revenue alienated amounted to Rs. 1,20,88,034. Of this Rs. 50,13,936 have been disallowed, leaving Rs. 69,87,423 still alienated. Most of this is in land revenue-free, but a portion is paid by the State from the treasury direct. Up to 1872-73 the cost of the departmental agency of enquiry into and settlement of inám holdings had been Rs. 24,10,813[9].

§ 9.—*Rights in trees.*

Rights in trees may be here conveniently alluded to.

In Government (unalienated) lands under settlement made before the Code became law, all trees (unless reserved under special orders) are held to belong to the occupant of the number. Settlements, however, made not only before the Code, but before Act I of

[9] Administration Report, page 71.

1865 was passed, do not give right to teak, blackwood, or sandalwood, unless conceded in express terms.

In settlement after the Code, all trees not expressly reserved go with the occupancy,[10] and so when an unoccupied number is applied for and granted.

All trees otherwise belong to Government, and so do road-side trees.[1] The latter trees are said to belong to Government while they live, but if they die, are blown or cut down, they belong to the occupant of the land, and the usufruct, produce of loppings, &c. (when lopping is allowed by the Collector), also belong to him.

But for a term of two years from the date of the Code becoming law, the landholder was allowed to get the strip of land on which such trees were growing cut off from his holding and the assessment reduced accordingly; then the trees and the land vested in Government.

When trees have been reserved to Government, as above stated, it may be that the reservation is accompanied with certain privileges of wood for fuel or domestic purposes; in such cases the privilege is exercisable under rules to be made by the Collector or such other officer as Government may direct[2].

In alienated lands, as a rule, the trees belong to the grantee, but not teak, blackwood, or sandal, unless they have been specially conceded[3].

§ 10.—*Land tenures in Sindh.*

There were doubtless old customs of landholding in Hindu times, but these have become completely obliterated by successive conquests and by the adoption of the Muhammadan faith by a large proportion of the population. There are still traces of a village

[10] See Code, sections 40—44.

[1] Revenue Code, sections 41, 43.

[2] *Id.*, section 44.

[3] For this information I am indebted to Colonel the Hon'ble W. C. Anderson, Survey Commissioner. See also Nairne's Handbook, pages 367, 368.

area or "deh" of a group of families acknowledging but one head; but "all trace of an organisation for administrative purposes, all trace of village officers with assigned duties and remuneration, has long since passed away, and at the present day is unknown even to tradition[4]."

The land then seems to have passed into the hands of chiefs or powerful landholders, who appear each to have held as much as his power enabled him to protect and his means to construct irrigation canals for. The cultivators would only too gladly in troublous times acknowledge themselves as inferior proprietors of their holdings under such a protecting landlord, and paid him "lapo," or rent. In many cases the landholders, for whom I have not learned any local or more distinctive name than "zamíndár," survive; in others they have disappeared, leaving the individual peasant proprietors of holdings. In the latter case, the raiyatwárí settlement is naturally suitable, and it has been introduced even where there are zamíndárs, because it is easy to assess each holding, and allow the zamíndár his dues as over-lord. But the raiyatwárí system treats the waste, whether divided into numbers and assessed, or left in large blocks unassessed, as at the disposal of the State; and in the zamíndárí estates the landlords had such a claim to this[5] that it was contemplated to allow them the right over the whole estate. It was obvious, however, that if they paid the raiyatwárí assessment on the whole, the result would be ruinous to them, unless they could cultivate it all. In 1875 therefore, the zamíndárs were offered leases providing that they might retain the waste, but pay a lump assessment, calculated at something (not exceeding 30 per cent.) less than the total of the amounts of the included waste and survey numbers. The area of waste included was further limited to what the holder could bring under cultivation, permanently or in rotation, during the term of settlement. Leases of this kind have, however, not been accepted, and that

[4] Administration Report, 1872-73, page 65.

[5] See Stack's Memorandum on Settlements, 1880, pages 9 and 523.

the zamíndárs prefer to hold under the ordinary "new system[6]." This system provides for the fallows that are necessary in Sindh, as well as for the accidents occurring in cultivation, which is dependent on the filling of inundation canals by the floods in the Indus river, and in some cases by the overflow of the river itself. The "survey numbers" are made of such a size that they can be fully cultivated in a single season: the assessment has to be paid if the number or part of it is cultivated; if it is not, the holder is not obliged to pay the revenue or relinquish, as under the strict Bombay settlement: he is allowed a lien on the numbers for one or two years, as the case may be, no assessment being charged for that period. After the period for free fallow has passed, the assessment has to be paid or the land resigned.

This system is said to work well, and it seems that the zamíndárs in these estates are content to work on this rather than take such leases of their estates, as I previously mentioned.

There is, in the northern part of the province, a species of land-tenure which seems closely to resemble the "chakdári" described as existing in South Panjáb. It is called "maurusi-háripan" (hereditary tenant (ploughman) ship). The tenant has to pay a málikána or quit-rent to the zamíndár, which is usually only 6 or 8 anas an acre, and cannot be enhanced. The tenant is the "registered occupant," but the quit-rent payable by him is recorded[7].

There are some revenue-free grants, jágírs, charitable grants (or khairát), garden grants, and a few grants near Shikárpur called pattádári.

[6] The previous system allowed every one an area of fallow for which the owner was expected to pay. The cultivator was allowed to hold three times as much land as he paid revenue on, *i.e.*, he virtually paid one-third of the full assessment. This led to people cultivating the *whole* till it was exhausted, or cultivating the whole for one year and then taking up a new place.

[7] Administration Report, 1872-73, page 66, where it is mentioned that this tenure resembles the *aforamento* of Portugal and the *beklemregt* of the Province of Groningen, mentioned by M. de Lavaleye in the paper on the Land System of Holland and Belgium (Cobden Club Essays).

The garden grants were made to encourage the bringing of land under garden cultivation. Jágír grants are heritable only by lineal heirs male.

SECTION VI.—THE REVENUE OFFICERS AND OFFICIAL BUSINESS.

§ 1.—*The District or Collectorate.*

In Bombay the "collectorate" answers to what is called a district in other parts of India[8]. And the Revenue Code introduces the term "district" in the general sense in which it is used in India, providing that the present collectorates or zillahs shall form 'districts[9].'

The district consists of sub-divisions called "tálukas;" and these may be locally again sub-divided into "petas," &c.

The official designation under the Code, of a sub-division of a táluka, which has an assistant to the táluka officer in charge, is "mahál."

The Collectors hold charge of districts: they are aided by Assistant Collectors and by Uncovenanted Deputy Collectors, who may be placed in charge of a district consisting of one or more tálukas. The Assistant or Deputy in charge of a táluka or several tálukas has all the powers of a Collector as regards the local area of his charge. But the Collector may reserve certain powers to himself or assign them to another Assistant or Deputy Collector. And under Chapter XIII an appeal lies to the Collector. Over the táluka is the mámlatdár, answering to the tahsildár of Upper India: and when the táluka is sub-divided, the mámlatdár's assistant is called the mahálkari. In the mámlatdár's office are assistants called kárkun, and the head kárkun (like the naib-tahsildár of Upper India) may have subordinate magisterial powers[10].

[8] Formerly in Bombay 'district' was used as synonymous, not with a Collector's charge, but with a local division of it—the táluka. The term zillah (zila') used also to be employed as a purely judicial term, and is now obsolete in Bombay.

[9] Revenue Code, section 7.

[10] See Nairne's Revenue Handbook, Chapters II, III.

Over the Collectors are "Commissioners." Originally there were two of these officers, called Revenue Commissioners, one for the "Northern Division," one for the Southern[1]. A third Commissionership was created in 1877, and the title of the office is now simply "Commissioner," as in other provinces[2], and his charge is a "Division."

§ 2.—*Village officers.*

At the head of the village organisation is the patel. The patel may have his "watan," and then the patel's family all share in the watan, and one member, who receives a remuneration from Government, does the duty of the office. He collects the revenue from the raiyats, conducts all Government business with them, and exerts himself to promote the cultivation and the prosperity of the village. "Though originally the agent of Government, he is now looked on as equally the representative of the raiyats, and is not less useful in executing the orders of Government than in asserting the rights, or at least making known the wrongs, of the people[3]." On receiving revenue from the raiyats, the accountant enters it in the Government books and issues receipts. The patel is also the agency for reporting everything that is necessary to the námlatdár[4].

Where there is a watandár or hereditary accountant he is called the kulkarni. But there is no kulkarni watan in many villages, and even in some whole districts[5]. In that case a stipendiary accountant called talátí is appointed.

The village menial (called "mhár" in the South Maráthá Country, "dher" in other parts) is the guardian of boundaries

[1] Originated under Act XVII of 1842. Sindh is of course separate.

[2] For details of powers, &c., see Nairne, Chapter II, and for Collectors, Chapter III. The Collector's head-quarters are described by the term "huzúr," which is the same as "sadr" in Upper India.

[3] Nairne, Chapter VI (quoting Elphinstone).

[4] In Guzarát in the joint villages the múthádár is the headman.

[5] Nairne, Chapter VI, page 87

and is the messenger: he it is who carries the revenue and the patel's reports to the táluka officer (the mámlatdár).

In some parts I find mention of a village watch called jáglia, as in Berar.

"The village system," writes Mr. Nairne, "exists most vigorously in the Dakhan, where every village has its full complement of watandars. In the Coast districts generally, it has not been so well preserved; in Kanára there are no hereditary village officers at all; in the Khoti districts of the Southern Konkan few watandárs of any sort; and in the Northern Konkan no kulkarnis, and but few inferior watandárs. But everywhere under our Government there is for every village, either hereditary or stipendiary, a patel, an accountant, and a menial servant[6]."

§ 3.—*Inspection.*

It is here necessary only to notice as a feature of general duty, that repeated inspection is made a great point of in Bombay. Under any revenue system, indeed, inspection is of the first importance. Revenue officers must constantly control their subordinates; otherwise they cannot develop the revenues of the district, or ascertain whether the revenue assessment is burdensome or easily borne, whether public health is good, whether irrigation works, and the making of roads, tanks, and wells, tree-planting and such like improvements are attended to; whether education flourishes and the people are happy and well governed; without constantly seeing for themselves and freely mixing with the people and hearing what they have to say locally, and without the restraint of a public office and the presence of subordinate officials. Moreover, for revenue and statistical purposes, the village accountants have everywhere to furnish statistics of crops, of land-transfers, and so forth: these will be filled in anyhow, if the makers of them do not know that a supervising officer will examine the records and check them occasionally on the ground. Village accounts will

[6] Nairne, Chapter VI, page 88.

fall into arrear, and revenue receipts fail to be properly given, if the accountant does not know that at any moment his papers may be called for. There is no province in India to which these remarks do not apply. But a raiyatwárí settlement requires, perhaps more than any, such inspection. It is therefore laid down as a rule that Collectors and Assistants are to pass the greater part of the year n camp; only the four monsoon months, as a rule, being spent at head-quarters.

The Government deals with each individual landholder, and therefore it is essential to see that his payments are properly acknowledged; the examination of raiyats' receipt books (kulruzuwát) is therefore an essential branch of inspection duty.

So also in the constant maintenance of the field boundaries, on which everything, I may say, in a raiyatwárí settlement, depends. The local subordinates are primarily charged with the duty, but their work has to be examined and checked by the superior staff.

§ 4.—*The jamabandi.*

Still more imperatively does the raiyatwárí system demand control over the actual extent of fields in occupation; for under this system every field has its own assessment, but the number of fields actually held by any one raiyat is liable to vary, and consequently the revenue for which he is responsible.

Any raiyat may abandon a field, or take up a new one; consequently it is essential not only to check the fields relinquished or occupied during the year, but the actual revenue amount payable by each raiyat has to be made out accordingly. The revenue-rolls or "jamabandis" are therefore to be prepared annually, and not only is every assistant made to check a proportion of them by making them out himself, but even the Collector is required to make out a certain number himself in such a way as to go over the whole district in the course of a few years.

The jamabandi work should be all done by the 15th February, or at latest the 15th March, as the official year ends on the 31st March.

§ 5.—*Relinquishment and occupation of land.*

I have already said something under the head of rights in land to explain the procedure in taking up and relinquishing fields. The razináma or application in this matter goes to the mamlatdár. If an entire number is relinquished the process is simple. The relinquished number is granted to any applicant, and if not applied for is sold byauction as fallow land (for the grazing on it) during the year.

If a recognised share of a number only is relinquished, the share must be offered to the other sharers in the order of the largeness of the amount payable by each as revenue. If all refuse to take it they remain proportionately liable for the revenue of the relinquished share, till some one takes it up. This in effect compels the sharers either to take up the share, or else join with the sharer desirous of relinquishing, in giving up the whole number[7].

§ 6.—*Maintenance of boundary marks.*

As already remarked, the maintenance of the corner marks, whether stones, earthen ridges, or otherwise, so as to make permanent the survey division into fields, is of peculiar importance.

The Code definition of a boundary mark, it should be recollected, includes "any erection, whether of earth, stone, or other material, and also any hedge, vacant strip of ground, or other object, whether natural or artificial, set up, employed, or specified by a survey officer[8] or other revenue officer having authority in that behalf in order to designate the boundary of any division of land."

By section 123, every landholder is responsible to maintain the marks of his holding in good repair, and for any charges incurred by the revenue officers in cases of alteration, removal, or disrepair. The duty of the village officers and servants is to prevent destruction or unauthorised alteration of the village boundary marks. The duty of looking after the marks and requiring their

[7] Code, section 99.

[8] Section 3, No. 9, *i.e.*, the officer appointe under section 18.

repair and erection devolves on the Collector when the survey officer's work is over, and he has powers under section 122 to require the erection or repair, or to do the work himself (at the cost of the landholder) if the landholder neglects.

By section 125 power is given to the Collector, survey officer, mamlatdár and mahálkari, to summarily convict offenders for injuring marks and inflict a fine not exceeding Rs. 50 for each mark. Half of the fine may be spent in rewarding the informer and half in restoring the mark.

§ 7.—*Partition: recognised shares.*

The terms "perfect" and "imperfect"[9] partition are not here applicable, because there is not, as a rule, any joint responsibility; but under the Bombay system there are two operations which may be performed in respect of shared lands which are in some respects analogous to partial and perfect partition. For example, there may be a partition which goes so far as to separately demarcate and number in the revenue records, the partitioned plots, if they do not already consist of fields bearing separate numbers; or there may be a process which is analogous to a partition, in which the shares are ascertained and "recorded," but not separately demarcated or given new numbers. The "recognised shares" are practically separate, as far as the liability for revenue is concerned, and each recognised sharer can ordinarily be held liable only for his own share. If a partition, or at least a record of shares separately assessed, has not been made, the one person whose name is, according to rule, always entered as "registered occupant" of the number, remains liable for the whole revenue, no matter how many sharers really hold along with him.

Under the Code, the partition spoken of is the complete partition. It must be made, if possible, so as not to divide existing survey numbers, but it should be contrived to give one or more whole numbers to each sharer. The splitting up of an existing survey number is only resorted to if really necessary, and even then

[9] See Code, Chapter VIII, section 113 *et seq.*

it cannot be carried out so as to leave any of the newly-constituted numbers below the minimum size[10]. Any bit of land that is over, and cannot be further divided out, owing to this restriction, is either given over by consent to one of the sharers on his making up the value of it to the other sharers, or it is sold and the proceeds distributed[1].

At time of survey or revision of survey, the survey officer can, of his own motion, subdivide any field and give new numbers and separate assessments without any formal procedure for partition.

Any one can apply for partition if he is admitted to be a co-sharer, and be so recorded, or if he can get a decree of a Civil Court that he is a sharer.

§ 8.—*Lands affected by river action.*

The Bombay Code provides that an alluvial accretion of not more than half an acre, and also not more than one-tenth of the "holding" against which it has formed, is at the disposal of the occupant of such holding. The term "holding" here means either a whole survey number, or a portion which has its separately recorded assessment. If the accretion exceeds this amount, the land is at the disposal of the Collector, who must, however, if he sells it, offer it to the adjacent holding and at a certain price[2].

If a holder of land loses by diluvion a plot of not less than half an acre, *and* not less than one-tenth of his holding, he is entitled to a decrease of assessment[3].

§ 9.—*Recovery of arrears of land-revenue.*

In Bombay, as already remarked, the registered occupant is primarily liable for revenue in Government lands[4], and in alienated lands (where revenue is payable) the superior holder,—the grantee.

[10] The minimum size has been variously fixed according to the circumstances of the different districts. See page 554.

[1] There are also special rules for joint estates like khoti tenures, into the details of which I do not enter.

[2] Code, sections 63, 64.

[3] *Id.*, section 47.

[4] *Id.*, section 136, 1st cl.

If the person primarily responsible fails to pay, a co-occupant of any alienated land, or a co-sharer in alienated land, or the inferior holder or person in *actual* occupation, is next held liable[5]. In the latter case credit will be allowed the inferior holder for such payments in all demands against him by the superior holder for rent. The revenue is paid in instalments fixed by the order of Government[6]. It is technically due any day after the first of the agriculture year, which begins on the 1st August and ends with the close of the 31st day of July following.

The Bombay Code requires revenue officials and others to give receipts for payment of revenue; "superior-holders" are equally bound to grant such receipts to their inferior holders[7].

The land-revenue is a first charge, taking precedence of all other debts and mortgages on the land, and is also a first charge on the crops. There are certain circumstances under which the Collector is empowered to attach the crops (either to prevent the reaping or the removal of the grain when reaped, according to circumstances) as a precautionary measure, to secure the current year's revenue, but only *one* year's revenue[8].

Revenue "in arrears" is revenue not paid on the instalment-due dates. Interest or a penalty may be charged on arrears under the Bombay Code; a scale of such penalty or interest-rates being fixed by Government[9]. A statement of account certified by the Collector, his Assistant or Deputy, is conclusive evidence of the arrears[10].

I do not propose to go further into detail as to the process of recovery than to say that it can be effected by—

(*a*) serving a written notice of demand;

(*b*) forfeiture of the occupancy right or of the alienated holding on which the arrear is due;

[5] Code, section 136 2nd cl.
[6] *Id.*, section 146.
[7] *Id.*, sections 58, 59.
[8] See Code for details—sections 140—45.
[9] Code, section 148.
[10] *Id.*, section 149.

(*c*) distraint and sale of movable property;
(*d*) sale of immovable property;
(*e*) arrest and imprisonment of defaulter;
(*f*) in case of alienated holdings consisting of whole villages or shares of villages (as in jágírs, khoti estates, taluqdárís, &c.), by attachment of such villages or shares.

Nothing is said as to the *order* in which these processes are to be applied, nor is it said that the one is to be resorted to only in case of failure of another[1]. It is left to the Collector to adopt any process or more than one at his discretion.

Officers who have to recover any public money under the Bombay law will do well to read and bear in mind the terms of section 187, which fully (and widely) apply the procedure for recovery of arrears of land-revenue to every species (almost) of payment due to Government.

Jágírdárs and all other superior holders in Bombay (*i.e.*, both jágírdárs from the occupants under them and occupants from the tenants under them) can get certain assistance from the Collector in recovering the revenue or rents (as the case may be) due to them[2]. Provided that the demand refers to the *current* year's rent or revenue, the Collector can set in motion the same machinery as he could to recover Government revenue. There is also a power given to issue to certain superior estate-holders a "commission," enabling them to exercise directly certain powers for recovery of revenue or rent. This does away with the necessity for summary suits for rent.

§ 10.—*Procedure.*

The XIIth Chapter of the Code contains rules for the *procedure*

[1] In this respect the practice is different from what it is under the North-West laws, *e.g.*, under the Panjáb Act, arrest and imprisonment is one of the first thing to be tried: but then it is for a short time only. In Bombay the imprisonment spoken of may go as long as a civil imprisonment under a decree of like amount might. Sale of immovable property, other than that on which the arrear is due, is only allowed in the Panjáb in the very last resort and under special sanction. In Bombay it is put down as one of the ordinary processes for recovery.

[2] For details see Code, Chapter VII, sections 86—94.

of revenue-officers when making an enquiry or carrying out any business under the Act, and the XVth Chapter provides appeals from orders.

I do not propose to enter into details, but the chapter generally gives power to summon witnesses as under the Civil Procedure Code.

All enquiries are classified into "formal" and "summary." In the former, evidence is recorded in full, and so is the decision; in the latter only a memorandum of the substance of what the parties and witnesses state is made; the decision and the reasons for it being also recorded.

Unless the Code expressly directs that any enquiry is to be "formal" or "summary," the question which is followed is determined by rules made by Government, or, in their absence, by the orders of the superior officer, or by the discretion of the officer holding the enquiry, according as he thinks necessary, with a view to the importance of the case and the interests of justice.

CHAPTER II.

BERAR.

BERAR was, as explained in a previous section, assigned to the British Government by the Nizám of Hyderabad to pay for the support of the military force called the Hyderabad Contingent, and also to repay some accumulated arrears of debt.

There have been several treaties, which from time to time provided various changes owing to the increase of the debt and other circumstances. The treaty which finally created the present system was signed in 1853, and places the Berar districts in their present extent under the sole and complete management of the British Government. The surplus revenues, after paying the cost of administration and the maintenance of the contingent, are repaid to the Hyderabad treasury.

The districts, therefore, are not subject to British law as such, but are regulated by the will of the Governor General in Council. No Act has any force, *proprio vigore;* and when orders appear "extending" Acts, that merely means that the Governor General adopts such Acts as expressing his wishes on any subject to which they relate[1].

The administration is carried on through a Commissioner of Berar[2], who is the chief revenue and administrative authority in

[1] As a matter of fact, all the general Criminal and Civil laws, the Stamp law, Registration, and so forth, are in force, with or without certain modifications, as the case may be, in Berar, but their force is derived from the executive authority above described, not from their being Acts of the Indian Legislature.

On certain subjects, as forests, there are special rules, and of course there are many Acts not in force. But speaking generally, in the matter of law, Berar is administered very much like an ordinary Non-Regulation Province.

[2] Formerly there were two, one for East, and one for West Berar.

subordination to the Resident at Hyderabad. Under him are Deputy Commissioners of districts with their Assistants, as in a "Non-Regulation Province."

For regulating matters not requiring the orders of the highest authority, or for communicating and explaining such orders, "Circulars" are issued both by the Resident and the Commissioner, and these are now regularly printed, and are of course authoritative, since they are the orders of officers delegated to issue them (as part of their official duty) by the Governor General. The matters which in another province the Board of Revenue or Financial Commissioner would regulate are dealt with by the Resident, and the Commissioner's circulars deal pretty much with the same subjects that a Commissioner in any other province has power to regulate.

Many matters, especially in Revenue business, which is my chief concern, still remain regulated by custom or by the practice of the courts; and this circumstance would render it additionally difficult to describe the system of this province, were it not in contemplation to introduce the concise and clearly drawn Bombay "Land Revenue Code[3]" (Bombay Act V of 1879) as the general rule for guidance in revenue matters.

I think, therefore, that the most useful way in which I can deal with Berar is first to notice its settlement, which was made on the Bombay system, with some special modifications adopted to meet local requirements. I shall next proceed to discuss the land tenures; after which I shall briefly describe the revenue business of a district generally, taking the Revenue Code as a guide, but noting such express Rules of Berar as are likely to be maintained even if the Code is generally put in force. This chapter will then contain—

Section I.—The Settlement.

Section II.—The Land Tenures of Berar.

Section III.—The Revenue Officials and their Duties.

[3] Throughout this chapter I shall be understood to use the term "Code" with reference to the Bombay Act V of 1879.

Section I.—The Settlement.

§ 1.—*Discussion as to the form to be adopted.*

I have already presented an outline of the "raiyatwárí" settlement system as developed in Bombay.

I have alluded to the fact that in some parts of Bombay villages existed with something like a joint constitution which might have fitted them for a settlement on the North-Western Provinces model. And whenever the existence of such villages is a proved fact, it is not unnatural that the question should be raised,—are not the villages now of the non-united type, merely a decayed form of the other? In some instances, a study of history will furnish a decided answer in the negative: but it must be admitted that this is not always the case,

Now it will be readily admitted, even by those who are not favourable to the system of the North-Western Provinces, that whenever the village communities have really (and without the aid of a vivid official imagination) retained a joint constitution, it would be unwise not to avail ourselves of the facility which such a constitution undoubtedly affords to revenue collection, and no less wrong to ignore a custom which often guarantees self-government and continued stability in times of trial. It can never therefore be matter for surprise that administrators, who had been familiar with such advantages, should have asked somewhat anxiously, whether the non-united village groups were not really in times past of one family, and whether the union could not be restored.

When we turn to the settlement of Berar we find the influence of this feeling. The villages, as we found them in 1853, were, speaking generally, of the non-united type. But there were not wanting here and there indications which led many to suspect that the joint form had once existed. There can be no doubt that in some parts, the survival of certain local customs, and even some peculiar terms used in connection with holdings of land, point to the fact that there, the communities *were* once ancestrally connected;

and this fact led to some hesitation as to the revenue system to be adopted generally.

In South Berar some of the earliest of the short settlements (I believe they were annual) made on our first assuming management in 1853, were actually made "mauzawár," *i.e.*, by assessing a lump sum on the whole village; and a settlement on the North-Western Provinces system was even ordered for the whole province[4].

§ 2.—*The Raiyatwárí system adopted.*

But ultimately the preponderance of opinion seems to have been that, save in exceptional cases,—themselves hardly numerous enough to warrant a break in the uniformity of system—the joint responsibility could not be successfully revived; and a settlement on the Bombay principle was finally ordered.

It may be mentioned, however, that in Berar, at a later period, an attempt was again made to modify the Bombay system by grafting on to it a "record of rights" on the North-West model. As the Bombay system neither requires such a record[5], nor does it possess the requisite machinery for making it, some confusion of course resulted. The demand for it is another instance of the curious influence which particular systems exercise over the minds of those who are brought up under them. Lord Lawrence was thoroughly imbued with the ideas of the Thomason and Bird school, and could not trust the Bombay system thoroughly; so he thought that a record of rights would be a useful corrective, whereas it has only proved a source of legal difficulty.

[4] Berar Gazetteer, 1870 (Bombay Education Society's Press), pages 94 and 96. It would appear that the plan was to make the headmen proprietors, as in the Central Provinces, unless there were surviving bodies or lands held by divisions of old families (still called patti) who could be settled with as joint proprietors.

In speaking of the tenures, I shall again refer to the surviving traces of an original union of proprietary families in villages.

[5] The North-Western systems, creating a middleman proprietor between the raiyat and the State, have to guard carefully the "natural" rights of landholders by record. But the Bombay system creates no such middlemen, and therefore no record can be necessary, except to note the shares when a field or number happens to be owned by several parties, or in case a double tenure exists.

§ 3.—*Survey and assessment on the Bombay system.*

At the time of settlement, the rules of the Bombay Joint Report, with which the reader of the preceding pages is by this time familiar, were adopted with certain modifications, and a Code of simple rules was drawn up, which was sanctioned by the Government of India[6].

The survey and assessment are not described in the rules: these were done by Bombay officers exactly on their own principles as in force at the time. The differences introduced by the rules are chiefly in the matter of certain rights and duties of the occupants, which will be mentioned in their place.

This procedure was applied to the whole of Berar except to the hill tract of the Melghát in the north (Sátpúra Range), which is a vast tract of forest inhabited only by wandering jungle tribes of Gonds and Kurkús, to whom such a system was in those days, at any rate, inapplicable.

For all details as to survey demarcation of the fields and method of assessment, the student must recur to the preceding chapter on the Bombay system.

The Berar settlement was sanctioned for thirty years[7].

The assessment is stated by the second settlement rule to have included all cesses, but that means cesses levied under the old Native Government on land, and it includes the road cess. The cesses for education (1 per cent.) and the "jáglia" or chaukidár's cess are separate, and are levied in one sum at the rate of 15 pies per rupee.

In Berar the jágír and inám (revenue-free) villages were surveyed with the object of being assessed. But the order for assessment was afterwards cancelled.

At the close of the thirty years a "revision" settlement may be made. This term is always used under the Bombay system, whereas in other places distinction is drawn between "revision" and a re-settlement, the former term meaning that only some of the operations of settlement are re-opened, such as re-assessment or

[6] No. 407, to the Resident at Hyderabad, dated 10th December 1866.
[7] Gazetteer, page 96. and Settlement Rules, 1.

the revision of the record of right, while in the latter all operations are done *de novo*.

By the Berar rules, the revised assessment will be fixed, "not with reference to improvements made by the owners or occupants from private capital and resources during the currency of any settlement, but with reference to general considerations of the value of land, whether as to soil or situation, prices of produce or facilities of communication[8]."

§—4. *Position of the landholder under the survey settlement.*

The holder on his own account of a field or 'survey-number,' whether an individual or a body of co-sharers or co-occupants, is called the 'registered occupant:' he holds on condition of paying the assessed revenue and other dues[9].

Being "in arrears" at once renders liable to forfeiture,[10] not only the right of occupancy, but all rights connected with it, *viz.*, those over trees and buildings.

On the other hand, no occupant is bound to hold his land more than one year if he does not like it. As long as he gives due notice according to the law, *i.e.*, in due form and at a fixed convenient season (so that the land may be available for cultivation to a successor), he is free to "relinquish" his holding or any part of it comprising an entire survey-number or part of a survey-number, his separate occupancy of which is recognised in the revenue account. But he must pay up the revenue for the year. This is only reasonable in the interests of the public treasury.

A transfer of occupancy by sale or otherwise is also subject to the same condition, for it is in effect a relinquishment by the registered holder and an assent by a new-comer to take the holding in his place, and the Government is not bound by the transfer till the current year's revenue is paid up[1].

[8] Settlement Rules, No. 11. See also Code, section 106.

[9] Under the head of Tenures I shall revert to this subject, and explain it more fully. See Code, section 73, and exactly the same in Berar Settlement Rule V.

[10] So the Code, section 56.

[1] See this further described in the Chapter on Revenue Procedure.

Though the occupant is thus at liberty to diminish his holding according to his own pleasure, he is nevertheless free to maintain it for ever if he chooses.

At the close of the thirty years' settlement he must accept the revised assessment (if any alteration happens to be made[2]) just as in any other Indian settlement, and if he does not approve of the revised settlement he may "relinquish" the land : that is all.

The occupant of a field or number which is appropriated to agriculture (*i.e.*, is not a plot of building land, or site in a village or town, &c.) may do anything he pleases in the way of improvement, and may erect farms and agricultural buildings[3]. But he must not apply it to any other purpose than agriculture without the permission of the Deputy Commissioner.

§ 5.—*Rules regarding trees on the land.*

The right to trees on lands may here be conveniently noticed. I am not speaking of jágír and inám or "alienated" lands.

The Berar Settlement Rules regarding the occupants are in some respects different to those described in the previous chapter on Bombay rights. By Rule I, an occupant is always allowed to plant fruit trees, which then become his property; other trees are not mentioned.

By Rule X, an occupant who has held a field for twenty years or for a period anterior to the age of the trees, owns them; otherwise the trees belong to Government.

When a man applies for an unoccupied number which has valuable trees in it, if he only takes it at the ordinary assessment (which does not take into consideration the value of the produce of the trees), he gets no right over the trees. But when such a field is applied for, it is put up to auction at a fair upset price which *includes* the trees, and then if the applicant (or whoever is the purchaser) pays the upset price or more, he acquires the trees, and has only to pay the ordinary assessment on the land in future.

[2] See Berar Settlement Rule V. | [3] Code, section 65.

Holders of "alienated lands" in Berar are the owners of all trees[4].

In Berar when an occupant has not a right in the trees, if he wants to cut them for agricultural purposes he must get permission from the village officers. The tahsildár must be asked for timber for repairing buildings; but if the occupant wishes to cut any large number of trees or to cut them for sale, he must apply to the Deputy Commissioner, who can impose "any conditions that may appear advisable."[5]

§ 6.—*Shares in holdings.*

When a "number" is held by a body of persons, whether co-sharers bound by a family tie (or possibly by a body of associated co-occupants), only *one* person is entered as the "*registered*" occupant of such field or number, and he is responsible for the revenue. But each sharer can get his share recorded as a "recognised share;" only the holdings *need* not be separately demarcated. Every recognised sharer is then separately liable for the revenue of his share, exactly the same as if he were the holder of a separate number[6].

7.—*The Record of Rights.*

Under the Bombay system, as I have remarked, there is properly no room for any record of rights which occupies so conspicuous a position in the North-West system.

By the Code[7], the survey officer makes out one simple "settlement register," which consists of a list of the survey numbers, with the area and assessment of each and the registered occupant's name: and that is all. The Government may order other records to be prepared, and a register of "recognised shares," the object of which has been explained, is kept up under such orders. A register is also (as a matter of course) kept of "alienated" and revenue-free

[4] In Bombay, not of teak, blackwood, or sandal, unless these have been specially conceded.

[5] Settlement Rule X. See also Code, section 44.

[6] See also Code, section 99.

[7] *Id.*, section 108.

grants[8]; but no record of tenants and inferior holders and their rights is made, except perhaps in estates where there is some peculiarity of tenure and some superior proprietor, the result of a Government grant or of the former revenue system[9]. In any ordinary village on the common tenure, which is found unvaried over great extents of country, there is no necessity whatever for such a record. The survey officer simply enters in his register the person who is in actual occupation of the number. If this person admits that he is only there as tenant or on behalf of some one else whom he names, well and good; the name of that other person will be entered as the occupant. If he says he is only a sharer, and that so and so is the man to be entered as "khátadár," or registered occupant, that will be done; if there is any dispute, the parties must go to Court and get a decree; the Settlement Officer will then enter them accordingly; meanwhile he will register only the actual *de facto* occupant.

In Berar I already intimated that a departure from the system was ordered. The practice has not altered as regards registered occupants of the fields, but it was considered desirable to make a further record of the rights of those who were in occupation, but not shown as the "registered occupants." Such persons might either be tenants merely employed by the registered occupant, or might have rights as co-sharers with him, and it was thought desirable to record the precise position of every such person. To determine this position a number of rules were drawn up called "sub-tenancy rules[10]." First let me clear the way by stating that

[8] See also Code, section 53.

[9] Such a record, for example, is kept up in the khoti villages in the Konkan (see Bombay Khoti Act I of 1880).

[10] The expression is unfortunate; it implies that the registered occupant is the tenant of the Government, and the cultivator is his "sub-tenant." But the registered occupant is by no means the tenant of Government; his rights are different from those of a tenant, even though they are not those of a full proprietor. It is no part of the theory of the Bombay settlement, as applied to Berar or otherwise, that the Government is the landlord. No theory is stated, every occupant has the rights of an occupant, whatever the law declares those rights to be. In the so-

those rules do not apply to the actual holders or possessors of land in estates held by a jágírdár. In such estates, it would seem that the matter is intended to be settled by Rule XIX, which recognised as *sub-proprietors* of holdings those ancient "tenants" on the estate who had been there before the grant was made by the State.

The object of the record in Government lands, seems to have been the prevention of any possible injustice by the registering of one man's name as occupant, and leaving all the others who claimed to be occupants or co-occupants, to get their title in the Civil Courts in case it was disputed. There seems to have been some anxiety, if inferior rights were left to be established in the Civil Court when not admitted by the registered occupant, litigation might become excessive, or rights unfairly lost. Such anxiety was not, however, borne out by the experience of other parts where the matter had been left to itself.

The record seems to have effected nothing except some little confusion, and to have given rise to a voluminous and most useless "tenant-right" correspondence. The duty of preparing it was entrusted to the tahsildárs at time of settlement, but they had neither the leisure nor the establishment requisite to make the enquiries properly. Nevertheless, it was first ordered that the rights recorded were to be treated as finally settled. In 1877 this was, however, modified, and an appeal to the Deputy Commissioner was allowed in the form of a regular suit, in the course of which more complete investigation would be made.

In cases where two or more persons appeared in some sort of connection with the land, it might sometimes be doubtful whether these persons were co-sharers or co-occupants, or whether one was "occupant" and the other was his "tenant." The "sub-tenancy rules" endeavoured to lay down principles for decision in case there was no reliable direct evidence as to the relation. Supposing, however, the person in possession to be clearly the tenant of the

called "sub-tenancy" rules, however, the term sub-tenant practically means any person who is on the land, but is not the registered occupant of it in the Government register.

"registered occupant," then the rules proposed to define his position as such tenant, to specify the rent and terms of his tenancy. Here we see an attempt to raise the "tenant-right" question of the North-West system. It was proposed to rule that any tenant who had held under the registered occupant for twelve years should be immovable, save by decree of Court; only that the tenants could not alienate their rights. This proposed rule led to much discussion, and, as Mr. Lyall puts it, "raised thorny and difficult dilemmas." In the end, the rule was dropped, and indeed it was never regularly enforced, although it would seem that in some cases, in making the record of rights, the principle had been applied.

The objection was felt here as elsewhere, that if a twelve years' rule was made, it would not only secure the position of tenants who might, "naturally," by the custom and the feeling of the people, be entitled to a permanent holding (if there were any such in Berar), but it would be perpetually causing such rights to grow up, as year after year passed away, and tenant after tenant completed a bare twelve years' possession. With reference to this rule, then, it is held practically to be not in force; but where any record of rights had been actually made in accordance with its principle, this was held to mean that at the time the tenant was held to *have a presumption in his favour*, and that it was for the lessor—the registered occupant—to show that that tenancy was not a permanent one. In all other cases the tenant may claim any rights he likes, but he must establish them by facts; no artificial prescription runs in his favour. This seems to be the general conclusion of the voluminous "tenant-right" correspondence in Berar.

§ 8.—*Rights in alienated villages.*

As regards the right which jágírdárs and other grantees have in land, I shall mention the subject under the head of Land Tenures. Here it will be enough to say that the Settlement Rules[1] prescribed that alienated villages were to be surveyed and assessed just as if the

[1] Rule XIX.

revenue was payable to Government; but this order was subsequently modified. The jágírdár makes his own arrangements as to the sum payable to him by the tenantry; and it is only in case the occupants have held from a period antecedent to the grant, that they are specially protected by the rule which declares that in that case the grantee cannot take more from them than the Government assessment. The grantee is allowed to dispose of waste or unoccupied lands as he pleases, and we have seen that he holds the right to trees on the estate. The rule goes on to provide that if the grantee can show that his grant gives him the "proprietary" right, or that it was waste and uncultivated when granted, and that he has settled and cultivated it, then he is deemed *the proprietor* in set terms, and such right continues, even though the grant should from any cause lapse and the lands become liable to pay revenue to Government. Thus, in principle, every grantee is owner of exactly what his grant gives him; each case on its own merits[2]—of the land if the grant proves it, or of the revenue only if it does not. In case the jágírdár is deemed owner, the original occupiers of the land are protected by the terms of Rule XIX.

§ 9.—*The Records of Settlement.*

The result of the survey and assessment is embodied in a series of settlement records which, just as under the North-West system, are faired and deposited with the District Officers. The Bombay Code requires the following, besides the village maps: (1) the "settlement register," showing the area of each survey-number, with the name of the registered occupant; and (2) such other records as Government may from time to time order[3].

In Berar I have had the opportunity of examining a settlement record[4]. The papers on it consist of the following:—

(1) The village map.

[2] See Resident's Circular XXIII of 1879.

[3] Code, section 108. See Nairne's Revenue Handbook, VIII, 126.

[4] My acknowledgments are due to Mr. A. J. Dunlop, Assistant Commissioner of Akola, who most kindly explained the record to me.

(2) " Akárband," a statement of the fields and their numbers (giving also the assessment) stated in detail under three kinds of cultivation.

(3) The "wasúlbáki," a comparative statement showing (1) each occupant's holding under its number, and its assessment as it was by the system antecedent to the survey for the year in which the new settlement was to take effect; and (2) the same holding as it appears now, with its numbers, area, and assessment under the new or existing settlement. Thus the statement forms a kind of "balance sheet" (whence the name) between the previous and the present order of things.

(4) The "phesal-patrak," showing the persons who were admitted and recorded at the time of settlement survey as the occupants of land.

(5) " Phor-patrak," showing the areas and assessment of recognised shares in one survey-number, as where, for example, two small holdings have been clubbed under one number.

(6) The " inám patrak," a list of rent-free or "alienated" holdings.

(7) "Bhágani register," a list of co-sharers and their rights.

(8) A statement of " numbers " not cultivated, but reserved as village grazing grounds.

(9) A list of fields in which there were disputes about the co-occupant's or co-sharer's rights. It was on this that the tahsildár proceeded to a summary enquiry under the orders for a " record of rights."

(10) A record of forest numbers and "babul bans" (waste numbers covered with *acacia* trees valuable as fuel), &c.

There is also a paper called "pahanisur" or " pahani khurd," but this is a sort of annual return, the result of the patwári's (pándya's) investigation, showing the local name of each field and

the occupants as they actually are, and the old numbers as well as the new ones made at settlement.

Besides these, there are also the "kábulaits" (corruption of kabúliyat), which are the engagement papers signed by each occupant of land at settlement, and which contain also the conditions of his holding; and in Berar (which is important) his formal admission of the rights of any co-sharer or tenant on the land.

Section II.—The Land Tenures of Berar.

§ 1.—*Introductory.*

The villages in Berar were found at settlement to be in many, if not in most, cases aggregates of individual holdings of land, no family or hereditary connection between the different occupants being remembered. The village was indeed managed by a headman and had its staff of officers, menials, and artisans: but this was all that bound it together. With this form of village community—if the term can properly be used—the reader is already familiar. Much also of what has been said in the Chapter on the Central Provinces Tenures, regarding the patel and his "watan" and of the other features of the village constitution, is equally applicable here.

It was a peculiar feature of the (Maráthá) administration which preceded ours, that it always believed itself to be consulting its own interest when it dealt direct with the cultivators; wherever it has been firmly established, so as to be able to carry out its own theory implicitly, it has allowed no agents or middlemen to intercept the State revenues. It was only in exceptional circumstances that they called in the aid of revenue contractors or "málguzárs." Consequently, neither the revenue officials nor the headmen nor any others had that opportunity for developing, as they did in the Central Provinces, into the position of proprietors of the whole village. Under such a condition of things, unless, as in the Central Provinces, the Settlement Officer was under the restraint of a *system* which required a middleman proprietor at all hazards, it

was only natural that the settlement should be "raiyatwárí;" in other words, that each occupant should be recorded as the "owner" of his several holding; or that where there were two or more persons together holding a field or group of fields, they should be jointly declared the owners of such holdings, unless they desired either to have their separate responsibilities for the revenue defined, or could get an actual separate demarcation of their holdings under separate numbers at the time of survey. And this plan was adopted in Berar. The term "owner," however, is not applied[5], because in fact there are certain conditions attached to the holding of land which are not altogether consistent with any theory of "ownership" properly so called.

The Bombay Revenue Code accordingly speaks of the "occupant" of land, and the Berar Settlement Rules did the same. The Code, as we have already seen, declares that the "right of occupancy" is a transferable and heritable property; but that is not the same as saying that an occupant is *owner of the soil.* Notwithstanding this fact, the student of the official correspondence and reports relating to Berar requires to be on his guard against the popular but incorrect use of the term "proprietor." I shall endeavour to avoid the difficulty by always speaking of the "occupant" of land, unless I really mean "proprietor" in its full sense.

In examining into the tenures of Berar we shall find that our study divides itself into—

(1) tenures which now appear in the form of the ordinary "occupancy" right in unalienated or khálsa[6] lands;
(2) tenures arising from the hereditary village and pargana officers;
(3) tenures arising from royal or service grants.

[5] Except in the case of some grants by the State; then the grantee is called "owner" advisedly.

[6] Lands paying revenue to Government, not to jágírdárs or other grantees. I make no apology for occasionally repeating an explanation of this sort; the student may be glad of the reminder.

I.—Ordinary Occupancy Tenure.

§ 2.—Original form of the villages.

In this section I have first to enquire how the occupants of the several holdings came into their present position, and then to offer some remarks as to the nature of the "right of occupancy" which the revenue law acknowledges, and as to the practical difference between it and a full "proprietary right," such as the Bengal system and its derivatives create or recognise.

I have already adverted more than once to the fact that villages where at present each landholder is in no apparent connection with his neighbour, may not originally have been so constituted. They may once have been owned by a group having a common descent from one ancestor. That ancestor would have been the natural head of the community, would have owned the village dwelling-site, and the lands all round would have been partly cultivated by him and his sons, and partly by tenants whom he called in to help him and located on favourable terms, or who may have come in at a later period. The lands may then have become divided into certain main groups according to major divisions of the family, and each of these groups may have at first remained joint within itself, the profits and the charges being thrown into a common stock, until some quarrel arising (or for some other reason) the groups may have again been split up into minor shares or "pattís," and then the pattís into individual holdings. In the course of long years, and by the effect of transfers, of abandonments, of forced expulsions, and other changes and chances common to unsettled times, the memory of the family connection may have gradually become lost; and the revenue systems of the day may have unconsciously helped on the separation by dealing with each holder individually till the term "pattí" became only a sort of local memory as applied to a certain group of lands, and each cultivator was the independent master of his own field.

§ 3.—*Relics of a joint constitution in some places.*

There is reason to believe that such was the history of at least some of the villages in Berar.

In larger villages or "kasba towns" divisions of the land are still remembered, called "khels," which seem to be, like the "pattís" of the North-West, the separated shares of different families or branches and of an original stock[7]. In such cases the members of the khel furnish the hereditary "patel" or headman, and in some cases the land is marked off and occupied only by members of the khel.

In Mr. (now Sir A.) Lyall's Gazetteer several interesting extracts from the earliest reports in Berar are given, which directly illustrate this question of the survival of original family connections.

In North Berar, it would appear, no relics of the joint communities existed in 1853. In South Berar a class of hereditary occupants of land was recognised by the term "mundkári," and the custom (unless violently interfered with by the State) was that this heritable right was also transferable. In the same villages persons of other castes who settled in the villages and got only annual leases to cultivate were distinguished by the term "khushbásh." This clearly pointed to a feeling in the minds of the people that the classes so distinguished, *though both resident*, were one of them ancient, hereditary occupants, and the others not so[8]. There were those on the land who could never plant a tree or dig a well without asking leave of some one in a superior position as regards ancestral

[7] It is also said that the major divisions of clans or tribal groups were called "dimmat," like the "taraf" of the North-West, and that the smaller groups of shares would be the "khel" or "patti." For instance, suppose a clan or group of settlers of different clans settled in one place, each group might form a taraf (or to use the Maráthí term "dimmat"); each of the families might then divide the land into a separate patti or khel), the patti being afterwards held by a number of grand sons and nephews together.

I was, however, told in Berar, both at Amraoti and Akola, that the term "dimmat" was hardly known, but that "khel" was.

[8] A mere tenant resident in another village and coming to till the land for what wages he could get is called "pyakári" or "walandwár."

connection with the land; and the village fortified enclosure or site—the "garhi"—belonged to the ancestral "proprietors," other villagers residing round, but outside it. It may reasonably be concluded that wherever these vestiges remain, there must have once been a proprietary family collectively owning to an ancestral connection, although in the course of time and under the influence of the Maráthá system (which cared nothing for the original custom or history of the tenure) the connection became forgotten. In Berar the terms "mirás," "mirásdár" (still used in Khandesh and all the Central Dakhan) have been almost totally forgotten[9], except in the case of the old families (generally ex-pargana officials), who are proud of the title mirásdar; but then this refers rather to the watan lands (of which hereafter) than to the ordinary land tenure.

The term just alluded to—"mundkári"—has something of the same force; but it is curious to remark that while "mirás" indicates an ancestral connection and an *inheritance*, "mundkári" indicates only the fact of *first clearing the land.*

In parts of Bombay there was a distinction still preserved (in name at least) between people who were "mirásdárs" and those who were cultivators—"úpris" or "gatkúlis"—although under our survey system the distinction is now of no practical importance. It has before been noticed that Malik 'Ambar, whose settlements in the Dakhan were what Todar Mal's were in Bengal, recognised a proprietary right in land; therefore his system would keep alive the ancestral right of the original families who first conquered or settled the land, and the distinction between these and the men of other castes or tribes who cultivated their lands or were reduced to being their tenants.

§ 4.—*Effect of the Maráthá rule.*

The Maráthá system soon obliterated all this: the land was assessed, and the village headman had to make out a yearly "lag-

[9] Gazetteer, page 92.

wán" or rent-roll showing how the assessment lay on each several holding. The revenue officers exacted this amount, and, if it was not paid, turned the holder out without caring whether the popular voice called him by one name or another. In this way it soon came to be recognised that the "sirkár" was the owner of the land, and that each man held his land in virtue of his yearly permission to pay the fixed assessment.

Where the Maráthá power was firmly established, the rulers were too wise not to be moderately considerate to the people; for there was the risk that overpressed cultivators would abscond and leave the land untilled. But the time came when the Nizám and the Maráthás were struggling for supremacy, and then the motives for moderation were removed. Revenue farms became more common, and the man who then held the lands by an ancestral claim was really worse off than any one else : the farmers could tax him heavily, partly because he was, as a rule, more wealthy, partly because he was more strongly attached to the land and would bear more before giving up his ancestral holding; but the limit of endurance was easily passed, and the " mirásdár " had either to abscond or to sell his lands, and sink perhaps into the position of a mere tenant of the purchaser[10].

This system of farming the revenue seems to have lasted from 1803 down to the days of our own administration.

It is no wonder, therefore, that the original proprietary right of families should have become a shadowy memory, preserved only here and there in a few local divisions of land and in certain country terms and popular customs.

§ 5.—*But non-united villages were also a general feature.*

On the other hand, there certainly are many villages, and that over extensive tracts of country, where no such joint original right

[10] It is noted in the Gazetteer that the Nizám's Minister, Rája Chandu Lal (A.D. 1820-40), put a stop to the transfer of landholdings, his object being, of course, to make every transfer dependent on his permission, which had to be gained with a handsome fine or fee.

can be traced. When therefore it is found to be the case that not only were the villages originally non-united, over considerable extents of country,* but also that even where joint villages may be presumed to have existed, they have now fallen into complete decay, we can hardly help admitting that the system which best suited such a state of things was the equitable assessment of all *holdings separately,* and a declaration that each individual holder was entitled to be registered as the occupant with a heritable or transferable right of occupancy, subject to certain conditions which were necessary for the safety of the revenue.

This system avoids all theories as to who is the owner of land in a Western sense; it avoids also the difficulty of resuscitating a joint responsibility, to which the people would not have submitted, at least in very many instances.

§ 6.—*The occupancy or survey tenure.*

Sir Richard Temple has aptly called the occupant's right a "limited property," and Mr. (Sir A.) Lyall compares it to the tenure of an English "copyholder."

The right of occupancy is (as before remarked) declared to be "a heritable and transferable property," and the restrictions or conditions which apply to such occupancy are—

(1) The necessity for paying the revenue; failure to pay this causes the rights to terminate *ipso facto,* although, of course, it is in the discretion of the revenue officer to adopt other coercive measures to recover the balance instead of absolutely ejecting the defaulter.

(2) Partition of the land between persons holding jointly cannot, as will be explained subsequently, be carried on, so as to subdivide the land infinitesimally; it stops with a fixed minimum.

(3) The land may be improved, but cannot be destroyed or rendered unfit for agricultural purposes without express permission.

This last condition is alone sufficient to diminish the full "proprietary" right of Western law, for the full owner may destroy if he pleases.

There may also be some very practical distinctions between the acknowledged right of occupancy and a full ownership. For instance, if the land is taken up for public purposes, the occupant may have a right to compensation for loss of profits by cutting short his term of occupancy, as well as for money spent on unexhausted improvements; but the occupant has no claim to compensation, on the ground that the *land itself* has risen in value from any cause[1].

Again, a right of occupancy depends on occupation: it is lost directly a holding is relinquished by permission or is abandoned. You cannot hold over a right for a period of years, as you can a right of ownership in the soil, a right which you can revive at any time, so long as the Law of Limitation does not step in to bar your remedy in the Courts of Law[2]. The ordinary tenure, then, of land in Berar is that of an "occupancy," the origin of which is forgotten or is obliterated, and is now recognised on the basis of individual *de facto* possession.

[1] See Hyderabad Resident's Circular No. 14 of 29th May 1868.

[2] Yet I have heard of a case in which the circumstances were something of the kind. A recorded sharer in a field quarrelled with his co-occupant and left the place. Afterwards, thinking better of it, he transferred his share to a purchaser, who thereon tried to recover the occupation of the abandoned share. This was resisted, but the highest Court held on appeal that the possession could be recovered within a limitation period of twelve years. Now, there may have been special circumstances which made it appear that the occupation had been maintained constructively by the holding on of the other sharer. Possession *may* of course be constructively maintained, as when a person leaves his land and his "receipt book" in the hands of some other person, who cultivates and pays the revenue, getting the payments entered as made by, or on behalf of, the occupant in the occupant's book. But, otherwise, on principle, occupancy depends on occupation, and the right ceases with the occupation; no limit can apply, nor can it survive for a given time. Should such a principle as that applied in the appeal be generally recognised, it must lead to some inconvenience. I may allude to the case, well known in Berar, of the Gond cultivators in the Wún district, who so readily abandon land on superstitious alarms (see note to page 639, *post*). If such should have a claim to come back (and eject successors who have taken up the lands) within twelve years, the practice would lead to great confusion.

II.—Tenure by Office.

§ 7.—The watan.

I must now pass on to consider some cases where the origin of the land tenure is known and is to be found in institutions more or less peculiar to the province.

However much the true origin of the village landholder's right may have been forgotten, there is one class of holdings the origin of which has remained definite and universally recognised to this day. The Maráthá system, while it broke down all classes of rights in the soil, could not work without the quasi-hereditary officers, the patel[3], or headman, and pándya, or village accountant; and as these officials always held certain lands in virtue of their office, the tenure of land on this basis has everywhere survived. Not only those greater officials, but also the staff of village artisans and menials, necessary for the well-being of the community were often remunerated by plots of land held in practically the same way. These officials are spoken of as "watandár." The "watan," as I have already said, *includes* the holding of land, but is not confined to it. The hereditary watan is not only the official land, but the total of the official rights and perquisites; the "zirá'at," or land which he formerly held rent-free, or at a quit-rent, the official precedence or "mánpán" on ceremonial occasions, and the right to the building sites inside the village fort or mud-walled "garhi," with perhaps some dues and fees on marriages or other occasions.

The fact that the village headman had much to say to the yearly distribution of holdings and the assessment enabled him in former days, to get the best land into his own hands and assess it favourably or not at all. Under our Government the headman who actually performs the duties of office is allowed a cash per-

[3] The Maráthá term is pátíl (Wilson), the ordinary Hindi "patel," as I use it throughout. The word is often incorrectly written "potel" or "potail."

centage as remuneration, and therefore his "watan" lands are assessed[4] like any others, but still his tenure *of these lands as registered occupant* is dependent on the fact that he is a member of the family which got the lands originally in virtue of the office.

The succession to the hereditary lands is by the ordinary law of inheritance, so that all the heirs succeed together to the "watan," though generally only one is selected to perform the actual duties of office. In this way the "watan" lands have got to be held jointly by a number of relations, or may be divided out among them in recognised shares.[5]

[4] In Bombay under the Native Government the lands very often were not held revenue-free, but had a "jùdi" or quit-rent (which was, however, often heavier than the British survey assessment), and the lands have continued to pay this (or less, when it was excessive).

The 'watan' lands are there assessed so far as is needed to make up a fixed sum (calculated usually on a percentage of the revenue of the locality), and this sum is paid from the Government treasury to the person who actually does the work of the office. The 'watan' lands (subject to this assessment) are held by the watandárí family at large.

[5] I have on a previous page given an extract showing how tenaciously the holders of watans cling to them; how families that might, under other systems, have developed into great jágírdárs and become the landlords of their estates, in Berar let go their grants, but retained the "watan" attached to numerous officers, which they managed to concentrate in their family. In other provinces we have seen how inveterate was the tendency of revenue officials and grantees of the State to become proprietors of the land. They first begin with their own holdings, then by sale or mortgage, and even by violent ousting acquire other lands; then by having the power of settling the waste, they become the owners of still more (since the tenants they locate to clear waste look on them as their landlords). In this way they come gradually into such a position that they are recognised as proprietors. The Maráthás were too keen financiers to let the middleman acquire such a position, and intercept so much of the revenue, and hence these officials never developed into proprietors; at least not in Berar, for in the neighbouring Central Provinces, where circumstances were different, the revenue farmer, or málguzárí *did*, as we have seen, grow into a proprietor, just as the Oudh taluqdár or the Bengal zamíndár did, only the nature of farm was such that the estate acquired was more limited in extent. The effect of the system on this growth of the proprietary claim is very curious to observe. As long as the Maráthás have strong hold on the country, no such growth takes place; where they are weak and their supremacy is contested, it does so, and results in the málguzár proprietors of the Central Provinces, or the khoti proprietors of some parts of Bombay.

III.—Tenure by Grant.

§ 8.—*The Jágír.*

These were either large grants by the governing power on terms of military service, called (here as elsewhere) jágírs, or else there were smaller grants spoken of as "inám," the mu'áfi of other provinces.

In the case of the small grants it seems that they really were of the proprietary right in the land. "These," remarks Mr. (Sir A.) Lyall, "are perhaps the oldest tenures by which specific properties in land are held in Berar[6]. The Settlement Rules[7] declare that when the land granted was waste and was settled and cultivated by the grantee, the *full proprietary right* is considered as granted also. In other cases it depends on the terms of the grant. Naturally, in the case of a small plot of inám, the grantee would (himself alone or with his family) be the existing occupant, so there would be no question but that he was meant to receive the proprietary title: at least this would be true in most cases.

In large jágírs, however, there would be a number of villages already held (as any other villages are) by the occupants of the land with their hereditary headmen. In such cases the grant places the jágírdár over the head of these, and the question arises—was the jágírdár meant to be the owner, and the existing holder to be regarded as only his tenant? The question is not without importance, as obviously if the jágírdár is practically the owner, he ought to be entered as the registered occupant of every field in his estates, besides owning all the trees and all the waste. If he is not the owner, then he would only be a grantee of Government revenue of the whole, *i.e.*, the villagers instead of paying the share in the rental and produce to the State, would pay it to the jágírdár. *They* would then be the registered occupants, and the grantee would only be the "registered occupant" of just as many fields as he had in his own particular holding.

[6] Gazetteer, page 101.

[7] See Rule XIX.

§ 9.—*Question of the jágírdár's rights.*

It was originally a matter of some difficulty to determine this question. It was thought by some officers that the jágírdár was proprietor of all, and it was accordingly held that his estate should neither be assessed nor surveyed; that in fact it was a revenue-free estate, and that Government had no concern with anything within its limits. This proposition was not, however, accepted, and it was ultimately laid down in the Settlement Rules that all such estates were to be surveyed and assessed. It was admitted that the jágírdár had the right to the waste numbers, and might locate cultivators on them as he pleased, and that he owned all the trees which would have belonged to Government had there been no grantee. All occupants of land, however, who had held the land for a period antecedent to the grant, were to be held to be occupants of their holdings, and from them the jágírdár could not take more than the revenue assessed on the holdings. The question still, however, was not settled whether the jágírdár could be regarded as the proprietor of *other* lands. If he was not, the occupants could only be charged with the fixed revenue, just such as Government would take, no matter what was the date of their holdings, since the jágírdár only was in the place of Government and had no greater rights than Government claimed. If he *was*, the occupants were his tenants, and he might take from them what he could get, provided they were not under the terms of the rule above alluded to.

The question has received its latest reply in the Resident's Circular No. XXIII of 27th March 1879. It is in fact left to the real circumstances of the case and the terms of the grant. If the jágírdár lived apart and did nothing but receive the revenues of the estate (and in some cases he only got this paid, not to him direct by the occupants, but through the Government revenue officials), then, naturally, his claim would be limited. If the grant, however, gave him the whole right, or if his practical position was such that he directly managed every holding,

perhaps advancing money for improvements and stock, and exercising a close supervision over the land, he might naturally be regarded as the immediate superior holder or "landlord" of every field. Facts were to decide.

§ 10.—*Duration of the grant.*

Originally the jágírs were granted for life, but soon acquired a hereditary character, it being deemed in Musalmán times, beneath the dignity of the State to resume a grant once made[8]. Under the Maráthás, however, a number of the large jágírs disappeared, as the service conditions attached to them fell into abeyance, for the Maráthás had no scruple in resuming an assignment when the service was not required or was not performed. And it would appear that the conditions often were not performed, or only performed nominally. "A few followers, to enable the jágírdár to collect the revenue, were sometimes the only armed force really maintained. No musters were held, and when the troops were seriously called out, the jágírdár made hasty levies, or occasionally absconded altogether[9]."

§ 11.—*Ghátwálí jágírs.*

In some of the hill districts, ghátwálí jágírs, just like those we found in the south-western districts of Bengal, were granted to hill chiefs on condition of keeping the passes safe and open. "In Berar," writes Mr. (Sir A.) Lyall, "as all over the world, we find relics of the age when law and regular police were confined at least to the open country, and when Imperial Governments paid a sort of black-mail to the pettiest highland chief. The little Rájas (Gond, Kurkú, and Bhíl), who still claim large tracts of the Gáwilgarh hills, have from time immemorial held lands and levied transit dues on

[8] Gazetteer, page 101, &c.

[9] *Id.*, page 102. It will be remembered that most of the jágírs dated from the days of the Mughals, some few being created by the Peshwa and by the Nizám. The Maráthás did not much respect the old Mughal grants, and often charged them with certain revenue payments.

conditions of moderate plundering, of keeping open the passes, and of maintaining hill posts constantly on the look-out towards the plains. And along the Ajanta hills, on the other side of the Berar Valley, is a tribe of Kolis who, under their naiks, had charge of the ghâts or *gates* of the ridge, and acted as a kind of local militia, paid by assignments of land in the villages. There are also families of Banjáras and Maráthás, to whom the former Governors of this country granted licenses to exact tolls from travellers and tribute from villagers, by way of regulating an evil which they were too weak or too careless to put down[10]." In the Akola district, at the foot of the hill ranges, some lands are held on a "metkári" grant, which means on condition of keeping posts to guard the plains against the descent of robbers from the heights above.

§ 12.—*Charitable grants.*

Of the smaller inám grants, many were made either for petty services or for support of religious persons or institutions; others (called dharmmál) were for repairs and maintenance of tanks and reservoirs.

§ 13.—*Waste land grants.*

There is another kind of grant which probably ought to be entered here,—the grants of lands at fixed terms under the "Waste Land Rules." These grants take effect in the large waste blocks,—it may be occupying whole "villages," which were not divided into the usual small survey numbers or fields. The first grants of this kind were certain long leases at a fixed and favourable rate made in 1865, and spoken of as "ijára[1]," which means a grant or lease for a long time at a favourable rate. They were leases for thirty years of uncultivated "villages," beginning at a low rent, which was gradually to rise with spread of cultivation. At the end of the term the grantee will have the option of taking the whole village at full assessment, and becoming the registered

[10] Gazetteer, page 103.

[1] *Id.*, page 109.

occupant of it; if not, he will remain as the headman, while the actual cultivators will take the various numbers as registered occupants[2].

IV.—*Tenants.*

§ 14.—*Arrangements for cultivating land.*

The actual cultivation of land is often effected in Berar, as elsewhere, by the aid of tenants; but in many cases the "occupants" cultivate their own individual fields, or form a sort of joint-stock company to cultivate a number of fields[3]. Certain persons agree to contribute a share of the cultivating expenses, and to divide the profits in proportion to those shares. This proportion will usually be determined by the number of plough-cattle employed by each partner. It would seem that in such cases the landholdings become regarded as equally the right of the whole partnership, notwithstanding that in the revenue registers each is entered in the name of some one person. And if no term for the agreement is fixed, it can only be dissolved by a partition of shares, just as if they were a body of related co-sharers.

§ 15.—*Tenant right.*

I have already alluded to certain questions which arise about tenants. No artificial tenant right is now recognised, so that new cases of permanent tenancy are not arising, as they do or may in provinces where a twelve-years' rule is in force; but some cases of ancient tenancies have been recognised on the merits, as permanent.

§ 16.—*Batái or Metairie.*

Cultivating tenants often engage to till the lands of occupants on the "batái" system, which has been likened to the *metairie* of the Continent.

[2] Some clearing leases or grants of more ancient times are also found in some places and are called "pálampat."

[3] Gazetteer, page 98.

"The *batái* sub-tenure (metairie)," says Mr. (Sir A.) Lyall, "was formerly, and is still, very common in Berar. These are the ordinary terms of the batái contract: the registered occupant of the land pays the assessment on it, but makes it over entirely to the metayer, and receives as rent half the crop after it has been cleared and made ready for market. The proportion of half is invariable, but the metayer sometimes deducts his seed before dividing the grain. He (the sub-tenant) finds seed, labour, oxen, and all cultivating expenses. The period of lease is usually fixed, but it depends on the state of the land. If it is bad, the period may be long; but no term of metairie holding gives any right of occupancy.

"Metairies are going out of fashion. As the country gets richer the prosperous cultivator will not agree to pay a rent of half the produce, and demands admission to partnership. Money-rents are also coming into usage slowly, I think, because the land now occasionally falls into the hands of classes who do not cultivate, and who are thus obliged to let to others. The money-lenders can now sell up a cultivator living on his field, and give a lease for it; formerly they could hardly have found a tenant[4]."

Section III.—Revenue Officials and their Duties.

§ 1.—*The grades of officers.*

In Berar there is a Commissioner over the whole six districts, with only revenue and administrative, but no judicial, duties; each district is presided over by a Deputy Commissioner, who is aided by one or more Assistant Commissioners as in a "Non-Regulation Province." The "tahsildár" is the head of the revenue subdivision or "táluka."

[4] Gazetteer, page 98. The practice of batái is, however, still very common, and doubts have been expressed to me whether it is really going out of fashion as tated.

In the villages there are the patels or headmen, the village accountant (kulkarni or pándya), and the village servants as already noted.

Each village has a sort of "town-hall" or cutcherry, called the "chauri."

The whole of what has been said in the chapter preceding about the necessity for constant inspection under a raiyatwárí settlement, and the duty of preparing annual jamabandis, is equally applicable, as regards principles, to Berar.

§ 2.—*Village accounts and records.*

The system depends to a great extent for its working on the efficiency of the village accountants. The accounts and records maintained by the officials have as much importance here as they have under the system of North-West India.

I shall therefore describe the records which the Berar patwári is required to keep, as this will give some insight into his work. The "patwári's papers" are now reduced in number.

(1) The "jamabandi patrak," or revenue-roll of the year: this is most important; for the reader will remember that it is a feature of the Bombay system, that no one need hold any field for more than one year unless he likes, so that the list of fields actually occupied in any year *may vary* from what the previous year showed. This variation may occur either by the abandonment of some numbers, or the taking up of numbers hitherto unoccupied. It is then most important to have a correct account of the "numbers" actually occupied and the revenue to be actually collected in the year.

The patwári has to keep the different applications for land, and the "rázinámas" giving up land, and the papers showing transfers; these he has to produce as vouchers for the changes shown in the holdings in the yearly jamabandi. This document has to give all details,—the area of the field; the assessment (or the fact of its being revenue-free); any former balance due on it; the dues on account of the "jáglia" (watchman) and school cess; the name

of the registered occupant; a list of trees over six hands high ("mangoes," "other fruit trees," "mohwa trees," "Sindhi" or "date-palm," are shown in the columns);—the wells, whether "kacha" or masonry, whether used for garden irrigation or for drinking, whether good or brackish.

(2) To this is appended a supplementary register of fields lying "paríṭ," or uncultivated. It shows the area culturable and unarable; the assessment, if any; the wells and trees (as before); it distinguishes which fields are reserved for grazing and for special grass reserves ("ramna"), and what lands are occupied by village-sites, and so not available to be "occupied." Against these are three columns for the year's receipts under the head of—(*a*) income from grazing; (*b*) fruit, mangoes, &c.; (*c*) from mohwa trees.

(3) The "láoni kamjyásti tippan" shows changes in occupancy right, *viz.*, the rázinámas and kábulaits accepting occupation and relinquishing it.

(4) The "phera patrak," or inspection report, gives the particulars of the crop raised on each "number" or field. It shows the area of each field, deducting the parts that are waste or not under crops, and showing the balance cultivated; the kind of cultivation (wet or dry, garden or rice). This information is entered in separate columns for each harvest, rabi and kharíf.

The patwári has also the duty of seeing that every payment of revenue is duly written up in the receipt book (pautia bahi), which every registered land occupant holds.

This is of great importance to protect the occupant from the exaction of double payments; and further on account of the danger that the occupant runs of losing his field if the revenue has not been duly paid.

§ 3.—*Patwárís and deshmukhs.*

The hereditary or watandár patwárí may not be holding the office owing to personal unfitness or other cause; in that case a gomásta pándya (taláti of Bombay) is employed. In any case a

fixed percentage on the revenue is allowed the patwárí as remuneration for his duties.

Under the Native Governments a number of patwárís used to be supervised by a superior officer called deshpándya (just as a number of patels were by a deshmukh). The deshpándya had also his "watan." These have now no place in our system, and their families have received cash commutation pensions charged as a percentage on the revenue.

§ 4.—*The village headman.*

The patel or village headman in Berar is usually hereditary; that is to say, the "watan" descends by inheritance in the family to as many sharers as are entitled to succeed; and as only one descendant can, of course, be selected to do the actual duties of the office, it is one son or relative, the fittest that can be found, that is appointed. It may be occasionally that no one in the family is fit, and therefore that some one else has to be appointed. I have already mentioned that "watan" lands are not now left revenue-free as a remuneration for official work. The patel's remuneration for this is a fixed cash percentage on the revenue which he is allowed to levy on the village.

In small villages the patel has both revenue and police duties. He is agent for the collection of the State revenue, and is superintendent of the jáglias, who form in fact a sort of village police, though not organised under the police department, and performing many duties, as messengers, guardians of boundary marks, &c., which the regular police do not.

The patel must give information of all crimes, and, in cases of necessity, may arrest persons and enter houses for the purpose.

In some of the large villages a "police patel" is appointed separately from the "revenue patel." In that case the former has charge of the village pound and gets certain allowances from the cattle-pound fees[6].

[6] These duties are in Berar defined in Circular Orders.

Revenue business.

§ 5.—*Taking up, relinquishing, and transferring lands.*

In the earlier days of our Government, and even at the present time in less advanced districts, there were not only many numbers unoccupied, though capable of cultivation, but many changes took place owing to people relinquishing land[7].

In long-settled and prosperous districts this is of course very much less the case: land has become valuable, and every "number" that can possibly be cultivated has been long since occupied, and no one now thinks of relinquishment. Transfers by contract or on succession are practically the only changes that occur. I will, however, describe the rules which were laid down on the subject of unoccupied numbers, and on relinquishment and transfer. I have already remarked that the whole of the cultivated and culturable lands, not including intervening tracts of waste, were all divided out, on the principle described, into fields or numbers of a certain size, and were surveyed and assessed. But large tracts of waste (as in the Basim district) were only marked-off into blocks, not divided into "numbers" in the first instance. A number of these blocks have since been gradually cultivated, and now are divided into regular numbers permanently occupied. A rule in the settlement series (Rule XIII) provided for the procedure to be observed while such a course of gradual taking up of blocks bit by bit was in progress; but this procedure has now become obsolete, since the portions so taken have long since been formed into regular fields and brought on to the register.

When any person wishes to take up a survey number which has been relinquished by some one else, or has been hitherto occupied, he must take the whole number; but several persons may combine to take a number between them[8].

[7] In the Wún district this is still, I believe, the case. The Gond cultivators are very superstitious, and the occurrence of anything which the village astrologer declares unlucky, or the appearance of some sickness, causes the people to throw up their land and decamp.

[8] Settlement Rule XII.

Any person is at liberty to apply for any unoccupied "number" he pleases, but the Deputy Commissioner is at liberty to reserve certain numbers for village-fee, grazing, or other special purposes[9]; and also those which produce such excellent grass that the produce is pretty sure to sell for a sum in excess of the ordinary assessment of revenue[10].

All unoccupied numbers are put up to auction every year for the grazing only, preference being given to the occupants of the contiguous village lands. Should a bid exceed the amount shown against the number as its ordinary revenue assessment, the purchaser will be considered not merely as the purchaser of the grazing right, but will be entered as "occupant," and may, of course, cultivate the land. This does not apply to lands specially reserved under Rule XVII; they cannot without special sanction be diverted from the purpose for which they are reserved.

Any application for a number is made by filing what is called a "rázináma," *i.e.*, a document agreeing to take the number and pay the assessment. This is presented to the village officer, who sends it to the tahsildár[1], who satisfies himself that the application can be granted, and returns an order to that effect, so that the patwárí may make the needful entry in his village accounts. Relinquishment is effected in the same way. It must be done before the 31st March in each year[2].

This is one of the subjects on which the Berar Rules differ from those of Bombay. If one sharer wishes to relinquish, the Bombay Code makes it a condition that if no one will take the vacant share, the whole field must be given up. In Berar this was thought hard, and Rule VII merely provides that the share is first to be offered to the others; if it is not taken up (but it always is) by them, it remains unoccupied as a share, but the other sharers retain their shares. So, when a registered occupant dies, the name of the eldest

[9] Settlement Rule XVII. See also the Bombay Code, sections 38, 39.

[10] *Id.*, XIV. Such grazing reserves are called "ramna."

[1] See Revenue Code, section 60, for a similar provision in Bombay.

[2] Settlement Rule XXI.

or principal heir is entered, but[3] the names of others succeeding with him (according to the law of inheritance) must be entered also, and, if they wish it, be recorded as "recognised" sharers, so that each may pay his own revenue and no more.

On the death of a registered occupant, the Code[4] directs that the eldest son or principal heir is to be entered as registered occupant: if there is a dispute, it must be settled by a law court.

Transfers can be made by registered occupants or recognised co-sharers, by rázináma, in a similar way to that just described. The transfer may be effected at any time, but Government will not recognise it, *i.e.*, will still hold the originally registered occupant liable till the current year's revenue is paid up[5]. The Code[6] in Bombay treats relinquishment and transfer as the same thing, the former being "absolute," and the latter a relinquishment in favour of some other person[7].

§ 6.—*Other branches of duty.*

I do not say anything about partition, maintenance of boundaries, alluvion and diluvion, or the recovery of arrears of revenue. These matters are regulated in Berar mostly by local rules of practice: but in all essentials the rules are the same as under the Bombay Code, which will in all probability before long be formally introduced. The only remark I have specially to make is that in Berar, under the system of recording rights noticed above, all co-sharers or occupants had their separate rights recorded, whether they applied for it or not.

In Berar the revenue becomes due in two instalments, on 15th January and 15th March[8].

[3] Section 71.
[4] Settlement Rule VI.
[5] *Id.*, IX.
[6] Sections 74 and 79.
[7] Some special cases of relinquishment are mentioned in sections 75, 76. These it is not necessary here to describe.
[8] Settlement Rule XXIII.

CHAPTER III.

THE REVENUE SYSTEM OF MADRAS.

SECTION I.—HISTORY OF THE LAND TENURES AND THE SETTLEMENT.

§ 1.—*Value of a study of the Madras Revenue History.*

THE Madras revenue system has an importance in the Revenue history of India which is all its own. In the first place it was in Madras that the raiyatwárí method of settlement, as a system under our Government, originated; in the next place, the history of the Madras Presidency throws great light on the constitution of villages and the early customs of landholding which are really at the bottom of all Revenue systems. The Revenue history of Madras affords therefore an important aid in understanding not only the raiyatwárí settlement as a system, but the whole subject of land tenures in India, and why it is that our Revenue systems have developed differently in different provinces.

A thoughtful study of the way in which revenue administration grew up in Madras, will more than anything else tend to show that there is no such thing as a system which is right in the abstract, which can be held up as a model,—which can have its admirers, who hold a brief for its defence against all other systems. To compare one system with another, and regard a province which is managed under one as enlightened and blessed, while a province managed under another is regarded as in a backward condition, to compare the merits, in short, of raiyatwárí and zamíndárí settlements, is the idlest exercise of ingenuity in the world.

It has often been said of Bombay, for example, that the raiyatwárí system was not invented, but existed: this is perfectly true. There is rarely room for a selection of systems. The plan to be adopted

must suit the facts. If the Muhammadan conquest obliterated the old village institutions and brought zamíndárs of estates into a position of prominence (which is a question of fact and of local experience), the zamíndárí system (with which permanence of assessment has no necessary connection) is inevitable. If there are no zamíndárs, but the villages show a strong tribal organisation and a joint title to the entire area of a village, whether waste or cultivated, a system dealing with the body through its headmen, is equally sure to develop itself. If the village consists of individual holdings, its bond of union being such as has no reference to common landholding or united responsibility of any kind, a raiyatwárí system or method of dealing with each landholder individually, is the only one which is practicable without injustice, and without a purely artificial creation of an upper proprietary title over the whole village.

In the latter case, indeed, there is room for some historical questioning, whether the individual holdings are not a decayed form of a communal form which has survived elsewhere. There can be no question that both forms do exist, and when an officer accustomed to deal with joint villages, and impressed with a belief that dealing with one proprietor or one body of proprietors through a representative headman, gives the simplest and most workable form of revenue management, it is not surprising that, as Mr. Elphinstone did in Bombay, he should raise the question of origin, and cast about him to find traces of an original grouping of lands, and a means for restoring the responsibility of the body as a unit of revenue management.

§ 2.—*Madras affords an illustration of the different origin of villages.*

On questions of this sort the Madras Presidency affords peculiarly interesting information.

We have historical evidence to show that the original inhabitants, it is said Mongolian in race and Dravidian in speech, were

chiefly pastoral, and that they certainly had no communal organisation as regards the plots of land that were cultivated. In the process of time a wave of Hindu emigration passed over them.

The races mingled to a great extent, but some of the aboriginal tribes remained as predial slaves to the landholders, and others fled to the mountain ranges. The circumstances of agriculture in these forest-clad hills are always unfavourable to the development of land communities, because all over India the aboriginal races cultivate only by the method of forest-clearing, which is called kumri, júm, bewar, dalli, and by many other names in different parts of India. As land so cleared yields only one or two crops, after which the site has to be abandoned, the nomad habits of the tribes are necessarily maintained, and settled property on land does not arise. Nor did the first Aryan immigrants establish a joint system of holding land.

Whether it was the intermixture of the aboriginal races, or that the circumstances of the new home and the conditions of agriculture affected them, we cannot now conjecture; but they did not by tribes, clans, or groups of families, occupy defined tracts of land, regarding the whole as the property of the section, and dividing it out or managing it for the common benefit, according to their own rules. It is indeed probable that the admixture of races, the aborigines and the immigrants—themselves possibly not homogeneous—tended to prevent any common bond, or possibility of any common rule of sharing: that is all I can venture to say. They associated in villages, because without such association life would not be possible; they recognised a headman who managed their affairs; they had village servants and village artisans who rendered services to the group and were employed within its limits, but each man had his own individual cultivation as he pleased, or as his means enabled him to undertake it, and neither claimed any common interest with his fellows in the waste beyond the limits of his fields, nor recognised any common interest in his neighbour's responsibility to the ruling power for land revenue payments.

This first Hindu immigration in time was followed by a second[1]; but this time the people who came were evidently not of the same class as their predecessors; they were distinguished by warlike habits and organisation, and seem to have belonged to the race now represented in Upper India by the Rájputs.

In Northern India the later Aryan tribes appear under two very different forms as regards their land organisation. The Panjáb shows most clearly the tribes settling down as entire people in defined areas and resulting in village communities each complete in itself. Rájputána, on the other hand, and many other places show a totally different system in which village communal organisation had no part. The tribes only appeared in small bands, and became the conquering rulers of the country without furnishing a large proportion of the local population. Exactly the same differences followed the immigration of these races when they proceeded southward to Madras. They introduced in fact *two* different systems of landholding, just as they did in Upper India[2].

§ 3.—*The divisions of the Madras territory.*

The Madras Presidency, both as regards the effect of these immigrations and otherwise, may be roughly divided into three tracts—(1) the North or Telugu country, extending as far south as the Nellore district; (2) the Tamil country, below Nellore and to the east and south of Mysore, including the districts of Chingleput, North and South Arcot, Salem, Tanjore, Madura, and Tinnevelly; and (3) the West Coast, Kanara and Malabar (the rest—Cochin and Travancore—being Native States).

Now, the Telugu country seems to have retained most of the earlier Aryan or non-united villages, but this part of the country was, as we shall presently see, so completely dominated by the

[1] See "Standing Information" regarding the Administration of the Madras Presidency (Government Press, Madras. 2nd edition, 1879), page 76 *et seq.*

[2] This important fact does not seem to have struck the able author of the historical sketch in the "Standing Information," who includes the Nair *chieftains* of Malabar and the village-founding *people* who have left traces in Chingleput and elsewhere in one.

Muhammadan institutions, that, in fact, it is almost like Bengal in the decay of village forms.

The Tamil country was occupied by that part of the second Aryan immigration which founded village communities, while the Western Coast was conquered by the military or Rájput portion, and these developed no communities, but a system of strongly individualised landholding (as in Rájputána of the present day), the bond of union being military retainership and graduated succession of chiefs.

§ 4.—*Districts in which joint villages appear to have existed.*

I must first of all devote a brief space to the history of the village community districts.

Communities of this kind are always liable to change. Under the most favourable circumstances, the joint body will be divided, and shares forgotten; the tendency is, in the nature of things, to progress or to pass from joint-ownership to severalty. The dominant race dies out, or is supplanted; the military power demands a heavy revenue, and they fail to pay; outsiders come in, and take their place with the original soil-owners, till either all sink to a dead level of individual occupancy, or the old soil-owners are only kept in remembrance by some distinctive names, and in some cases by some privileges or rights which are desperately clung to, but are being perpetually washed away by the waves of time and change.

There are still cases where the old land owning group has not died out, and where rents are paid by the actual occupants to the original owners; such are the cases called swáyatantram in Chingleput[3].

One important feature in such communities is, the reader will recollect, that within a defined area of land, the *whole*, whether waste or cultivated, belongs to them; and when the time comes for extending cultivation or the waste becomes valuable, the question of the right to it is of great importance. In non-united villages the

[3] Standing Information, page 78.

villagers may *make use of* the neighbouring waste, but no one has a claim to anything more than his own holding.

In the Tamil country, of which I am speaking, there are many cases where the village owners, however decayed, are still known by names indicating their being original owners or coparceners in the village, and still claim the waste: these claims are, however, not recognised by Government, except as a preferential right to take up the land for cultivation before outsiders[4], but not before other landholders (who may not bear the ancient title) of the village.

Evidence is not wanting to show that, at the first establishment of these immigrants, the land was divided out into a series of allotments or villages. (If there was any larger grouping superior to the village, it is not now traceable, and probably never existed, except as a territorial division of the Rája's dominions which were never large.) The village group managed its own affairs; the land was divided into shares called "ploughs,"—equal or approximately so, as the soil allowed. The land so divided was, as usual in early tribal settlements, liable to be re-apportioned by lot at intervals[5]; but in some districts this came to an end earlier than in others, and the division was recognised as permanent. There were the usual objections to admitting outsiders; sales were rare or unknown, but mortgages were frequent, with, however, an understanding for re-entry even after long intervals,—a curious fact which we shall see again in the case of Burmese tenures, and illustrating forcibly the early feeling against alienation of the land belonging to the group. When, however, an outsider *was* admitted, he was also admitted to all the incidental privileges of partnership profits from fisheries, fruits, waste lands, &c.

The names indicating the sharers' right are very various; we have terms signifying shareholding either in Tamil or Sanskrit, as karaikáran, pasangkarai, sarwadáyam. But it is curious that the ancestral right has now become very generally indicated by an Arabic term "mirás" (wáris—an heir), which may possibly have

[4] Standing Information, page 78.
[5] *Id.*, page 81.

been introduced by the admission of Muhammadans to the position of village coparceners, or because the Muhammadan conquerors gave it that name. In some cases the mirási right passed into the hands of one individual by purchase or survivorship, and then the united village right is spoken of, especially in Tanjore, as "ekabhogam."

The whole of the mirásidárs contributed to the village expenses ("malba" of Upper India) by paying small taxes (proportions of the grain produce of each field) called méré. These were spent on feeding Brahmans on festivals, lighting village temples, feeding visitors, killing a tiger, and so forth.

In some villages it became a custom for the original owners to claim a portion of arable land which was called "gráma-mányam," or village free grant.

The persons who resided in the village; but were not sharers or participators in communal privileges, were, as always under this system, numerous. They had to contribute to the village-taxes, and probably saved the mirásis from contributing at all.

Some of these were admitted as payakáris, paying rent besides the contributions. Others, however, had a more privileged position, paying fixed rents, and gradually acquired powers of alienating their holding. They were called ul-kudi, or "inside cultivators." Mere tenants-at-will were "outsiders," or para-kudi.

Under the exactions of the Muhammadan conquerors, it was very natural that these outsiders, together with the privileged tenants and the original mirásis, should sink very much to the same level; and the introduction of a raiyatwárí system would then further confirm their position as equal in right over their own holdings.

The cases where the dominant or mirási families claim an over-lordship and take rents are few: they survive in the cases called *swáyatantram* in Chingleput.

The pancháyat government also seems to have given way to more automatic government by headmen. Mányams, or grants of revenue, were early introduced, especially to remunerate village servants; and here was an additional cause for the community disappearing and the village headmen remaining with hereditary

lands and perquisities, analogous to the headmen of originally non-united villages,—the watandár families of the Maráthá countries.

§ 5.—*Districts in which the tribes effected a conquest, and appeared only as rulers. The West Coast.*

While, however, the tribes of the second immigration founded the village communities which thus arose and decayed, they only appeared in other districts as furnishing the ruling class, without settling as a people. It is in the West Coast districts that the features of this organisation can best be traced. In Kanára and Malabar no communities ever existed; the Aryan tribes did not settle there as a people, but at a later date certain Rájput chiefs took possession of the country and divided it out into estates.

A very interesting report on Malabar still exists, dating from the end of the last century, when a mixed Commission of Bengal and Bombay officers was sent to report on it[6]. This report tells us in detail how the Malabar Nairs arose, at least according to tradition which would appear to be founded on fact.

It would seem originally that the country was held divided by certain Brahman families, who had a republican constitution and no head. They of course invented a fanciful history for the country. The Malabar country was called "Malai-Yálam" because the deity caused the sea to recede and left the land so reclaimed to the Brahmans. I have, in another place, suggested that the Khsatriya King was a necessary part of the Hindu polity; true to this principle, it is related that, in the course of time, the Brahman landholders, being dissatisfied with the existing constitution, asked the king of the neighbouring country to send them a ruler. This he did by sending a Viceroy who was changed every twelve years. But at length a Viceroy, named Sheo Rám, established him-

[6] Report of a Joint Commission from Bengal and Bombay appointed to inspect the state and condition of the province of Malabar (presented to Lord Cornwallis) 1792-93. (Reprinted at the Gazette Press, Fort St. George, 1862.)

self permanently. In the process of time, Sheo Rám, it is said, embraced the faith of Islám; at any rate he wished to retire from the Government, and he consequently divided the whole country among his Nair chiefs, who thus became the owners of a series of estates: there was no over-lord, and that is the reason why no land revenue was paid, until later times, when Haidar Ali conquered the country and then exacted contributions from the Nair proprietors, which soon crystallized into a regular land-revenue. The Nairs occupied the land, leaving the Nambúris or original Brahman settlers, also in possession of their holdings. The Nairs' estates did not quite escape being disturbed, for, as Sheo Rám was going, a cowherd, called Uri, asked for a share, and Sheo Rám having nothing left but his own town of Calicut, gave him this *and his sword*, of which Uri made great use by forcibly extending his share; he it was who founded the chiefship known as the Zamorin (Samúri) of Calicut.

It is curious that the report continually speaks of the Nairs' estates as "Nairships."

In the ordinary course of things, these estates, as the families of the original chief expanded, would have broken up into groups, which would in fact have been ancestrally connected joint-villages. But the jungly nature of the country, and still more the curious customs of marriage and succession, prevented this[7].

The nature of the country is such that large villages do not grow up. The holdings are gardens and clearings in the forest, with a few houses on each. The consequence has been that the descendants of the conquering families have become possessed of separate holdings called "janmi." The "janmi" holding is now only registered as any other raiyati tenure. The janmidár owners generally do not cultivate themselves, but employ tenants called "patomkár." But a large number of the estates are mortgaged under the peculiar

[7] The son of the chief did not succeed, but the sisters' sons, and the sisters were only temporarily married to Nambúris. Each son was established in a quillom or kolgum,—a separate "house," and when the chief died, they succeeded in the order of seniority.

system of the country[8], so that it may be said that "janmi" lands are generally either in the hands of mortgagees or of tenants.

The estates are now owned jointly by the families. The joint inheritors, as already observed, are the sisters' sons, and they have no power of permanent alienation. Such a family group is called a tarwád (tarawáda), and is managed by a karwan or manager.

In later times Arab traders (Mápilas) got hold of many of the lands, and, strange to say,—perhaps by the influence of contiguity and example—held the estates in the same way as the Nairs.

It was in this way that the whole of Malabar came to be regarded as private property; no waste land remained at the disposal of the State. The chiefs or janmidars took the share of the produce from their tenants, and also seignorage on teak trees, ivory, and other jungle produce.

Our Government assessed the land after cession by Haidar Ali, who as conqueror had introduced a land-revenue.

§ 6.—*The Telugu country.*

In the Telugu country, in which mostly survived the village institutions of the first immigration, there are also traces of these chiefs' estates which in many cases developed into zamíndárís under the rule of the Muhammadans. Indeed the long and persistent dominance of the Muhammadan power in the Telugu country has served more completely to obliterate the organisation of both the first and second Hindu immigrations than elsewhere.

It is hence almost a matter of conjecture what the early system was; but it seems that in the Telugu country the village com-

[8] Permanent alienation was held to deprive the land of its privileged position as an estate not paying revenue; but mortgages became very common, so much so that a regular race of mortgagees arose in Malabar, and the names descriptive of different kinds of mortgage are various. The chief feature in all of them seems to be that the mortgage is for a number of years, and that the mortgagee is bound to bring the produce strictly to credit; after paying the interest on the sum advanced, the rest goes to reduce the capital debt. If a mortgage is renewed, it is usually so on the payment of a fine or fee which goes to reduce the debt.

munities were never developed as in the Tamil country, but that the villages were founded on the non-united type, held together by the system of hereditary village servants and officers. It is said, indeed, that a tenure akin to the mirási of the Tamil country is traceable in the recognition by the Muhammadans of a class of cultivators whom they called "kadím" or ancient. But if I may hazard a conjecture, I should say that the probability is that they were the original village holders, who were dominated over by some later chiefs, conquerors, or grantees: they were recognised as entitled to some consideration and allowed certain privileges, and when the chiefs became zamíndárs under the Muhammadan rulers, these privileged occupants were spoken of as "kadím;" the existence of such is therefore no necessary indication of any true joint-village system.

The interest of these facts in illustrating the question so frequently arising in our study of the Central Provinces, Berar, and Bombay is, that here we are able to account for the two forms of village organisation, each having a separate origin; and although the tendency of the one form to decay and pass into the other is shown, still there is no reason to believe that the early or non-united type of village was ever a communal form.

§ 7.—*The Muhammadan conquest.*

The effect of the Muhammadan conquest has now to be considered. The tendency of it was, not to change radically the land systems of the conquered country, but to modify them indirectly.

In Bengal, for example, the Mughal súbahdár never set himself to work to eradicate village institutions, or to introduce a new system. Akbar's settlement was in every respect calculated to keep things as they were, and simply to secure the State in its punctual realisation of its share in the produce—a share which was payable to the Hindu ruler as much as to them; but when the State began to appoint revenue agents to collect the revenue, then it was that the original village system, being in natural decay, gave way, and

enabled the revenue agents, by the mere force of circumstances, to grow into the position of 'proprietor' of the whole.

In Madras the effect of the Muhammadan conquest varied. The Northern Circars, the ceded districts, the Nellore district, and the Telugu country, form the portion that was longest under the Muhammadan rule. The southern part of the peninsula knew it only for a shorter time, the district of Tanjore never having been under the rule at all; the districts of Trichinopoly, Madura, and Tinnevelly were under it for about a century. The Coast districts, where Kanarese and Malayalam are spoken, were only under the Muhammadan rulers of Mysore for a comparatively short time.

It so happened that the Northern Circars were the first territories to come under our rule, and here the Muhammadan rule had established the system of zamíndárís most completely. The zamíndár had, as in Bengal, become proprietor in the usual way. He had to make good a heavy assessment to the State, and he consequently had to employ village farmers under him, whose first care was to get in the revenue; consequently he located cultivators for the waste as he pleased, and if he found that the original occupant of cultivated land did not manage properly, or did not pay, he unceremoniously thrust him out. No wonder then that the original land-tenures were obliterated, and the zamíndár became the landlord.

§ 8.—*Early measures of the British Government. The Permanent Settlement.*

The early measures of the British Government were simply based on the existing state of things. It was found that besides the zamíndárí lands there were others called "haveli" lands, not held by middlemen, but directly under Government. The lands were leased out annually or on short settlements, and in some cases lump sums were assessed on the entire village. About the same time as the Madras Government undertook the charge of the Northern Circars, the Bengal Government entered on the management of Bengal, Bihár, and Orissa.

When the permanent settlement with zamíndárs was introduced in 1793, the Court of Directors in 1795 desired the Madras Government to adopt the same system. This was objected to, but was ultimately ordered. The Northern Circars were accordingly permanently settled. The haveli lands were parcelled out into states of convenient size, and were sold as mootahs (mutthá) to the highest bidder.

But at the same time other territory was in possession of Madras. The country about the capital, known as the "Jaghire" (jágír), had been granted by the Nawáb of Arcot. This was settled in 1794 under Mr. Lionel Place, who, having here found villages owning to the joint constitution, established a joint-village settlement. But this country also came under the orders for permanent settlement, and here again the lands were parcelled out into mootahs and sold. Regulation XXV of 1802 (Madras Code) was then passed, declaring the zamíndárs and mutthádárs proprietors, and making their assessment permanent.

While these measures were in progress, the districts known as the "Ceded districts" were given over by the Nizám of Hyderabad, and in 1801 the Nawáb of Arcot's domains were ceded, so that the Presidency assumed its present form.

These districts also exhibited to some extent the effects of Muhammadan rule. Some of the lands formed estates held by chiefs called Poligars (Pálegára), and their Paleiams (Pollams) became zamíndárí estates permanently settled.

§ 9.—*The introduction of the raiyatwárí system.*

There were, however, large tracts of country that had not been parcelled out into "estates;" in these there were simply the original villages: and this circumstance gave rise to the introduction of the raiyatwárí system.

A large tract, spoken of as the Baramahál (the Salem district), was among the territories so held. A Commission was appointed to settle it (in 1792), among whom was named Captain Munro. The Commission did not here find united village communities: at any

rate it dealt rather with individuals than with village communities[9]. The Commission actually carried out a survey and a field-to-field assessment. But while this was going on, the agitation about a permanent settlement was at its height, and the result was that, in spite of what had been done, a permanent settlement was ordered for Baramahál, and between 1803 and 1805 the land was divided into mootahs which were sold to the highest bidders. This plan, however, failed so conspicuously that it had to be given up. Munro was evidently the active spirit in these parts, and the result was that, a few years later, the progress of the permanent settlement under Regulation XXV of 1802 was further stopped, and the settlement became raiyatwárí. It may be added that in other parts also where the mootah system failed, the system became raiyatwári; and such was the influence of Munro's views, that even where there had been joint-village settlements, they were abandoned.

The joint system did not die out immediately. The previous sketch of the land-tenure history will have shown how these joint villages survived in many places. Mr. Place's settlement in 1794, though overruled, had distinctly recognised them. And in 1808 the Court of Directors had distinctly sanctioned the trial of the joint system in several districts. Munro was, however, accustomed to the purely raiyatwárí system, and being a very able man, and having persistently advocated his system, his efforts were not without influence.

It must entirely depend on the natural vitality of the village system whether it can be relied on. There can be no doubt that some of the village settlements did not work in Madras, and in some cases speculators got hold of villages—a sure sign of failure.

Colonel Munro visited Europe, and it is highly probable that his views largely affected the decision of the Court of Directors. However this may be, in 1817 the abandonment of the village system was ordered, and though the Board of Revenue remonstrated, it failed to carry the point, and raiyatwárí settlement became general.

[9] Standing Information, page 92.

§ 10.—*Progress of the raiyatwárí system.*

The system of 1817 was well adapted to the districts where the villages were non-united, and took its place without difficulty even where the villages were really joint, because, as a matter of fact, time and circumstances had destroyed or impaired their distinctive constitution. But the same results were not everywhere attained.

Malabar and Kanára never had village communities, nor did the chiefs' estates resemble zamíndárís; but on the other hand they were unaccustomed to the idea of a Government assessment.

There were serious riots, but these at last being quelled, a raiyatwárí settlement was adopted recognising each holding separately.

In Malabar the country is divided into taluqas, these into amshams (ámisham), and the amshams into deshams; each has its revenue officials. The adhigári with an accountant or menon (menavan) is over the amsham, and a mukyastam over the desham.

In Kánára, also, there were no villages, only individual holdings: the Government assessment or "shist" was based on the amount of seed it took to sow the land. It had been in former days assumed that it took 2½ kattis to the acre; and the produce was held to be twelve times the seed, or 25 kattis. This was apportioned, 7½ kattis to Government, 7½ to the landholder, and 10 to the person whom he, according to universal custom, employed to till the land. An account had therefore to be made out for every landholder, according to his cultivation, whether permanent or kumri, and this was called "warg." In course of time the "warg" got to mean the holding or lands to which the account was applied.

Here, there being no field survey, the raiyatwárí system was so far modified that the assessment was not on the field, but on the holding.

The Muhammadan Governments, on their usual plan, tried to raise the old assessment by kattis, and as they could not conveniently alter that, they added to the "shist" various extra cesses called "shámil," and the total was called beríj or beríz. The British revision of this is spoken of as the "taráo beríj."

In Kanára each holding or warg has its house upon it; the headmen of groups of land are called patel; and every group of holdings, called mágáne or taraf, has an accountant called shánabhog (shanbogue).

It should be remembered that the holdings are not usually cultivated by the janmdár or holder, but more frequently by tenants. But the tendency of the raiyatwárí system is to obliterate this distinction, and Government may deal with a patomkár or cultivator, although he has to pay a rent to a janmdár over him.

§ 11.—*State of the settlements in 1820.*

In the spring of 1820 Munro became Governor of Madras, and of course then the ascendancy of the raiyatwárí system was secured.

At the time, however, of the orders of 1817[10] the permanent settlement prevailed in Ganjam, Vizagapatam, Rajamandri, Masulipatam, Guntoor, Salem, Chingleput, Cuddalore, and some of the "Pollams" of Chittoor. The village system was in force in the Ceded districts—Nellore, Arcot, Palnád, Trichinopoly, Tinnevelly, and Tanjore. The raiyatwárí system was only fully established in Malabar, Kanára, Coimbatore, Madura, and Dindigal.

Under the new orders, whenever village leases expired, or mootahs or zamíndárís lapsed or were bought in, the raiyatwárí system was introduced.

§ 12.—*Present state of the settlements.*

About one-fifth of the Presidency now remains permanently settled, chiefly in the north, with some Palegára estates elsewhere. It is curious that the Permanent Settlement Regulation of 1802 remains on the statute-book, but no general Regulation or Act exists legalising the raiyatwárí system or laying down any principles as to assessment, revision, and so forth.

There are only separate enactments for the protection of landed interests and for the realisation of the Government dues.

[10] Standing Information, page 96.

SECTION II.—MADRAS TENURES OF THE PRESENT DAY.

I.—Inám holdings.

§ 1.—*Method of settlement.*

It will be convenient, before proceeding to the description of the settlement proceedings, to finish the subject of land-tenures by explaining how the different forms of landholding now appear.

In the first place I must allude to the question of inám lands. In the early days of our rule, it was found that all kinds of alienation of revenue had taken place, and it was necessary to enquire into all these and see what were really valid and proper, and what were not, and what terms should be arranged for all such as were duly maintained. The Inám Commission was established in 1858. The work is now completed. The grants spoken of as ináms are proprietary grants, carrying with them either a total exemption from a revenue payment, or a modified payment.

In Madras, inám holdings refer always to the land-right as well as to the favourable rate of revenue, and are quite distinct from jágírs, srotriyams (shrotriems), &c., which are mere assignments of the Government revenue in favour of some person, who was in no sense owner of the land, and had nothing to do with the management of the land, having only the right to receive his revenue payment. This clear distinction we have found not maintainable in Upper India, where a jágírdár might or might not be the owner of the land as well as the assignee of the Government revenue. Ináms were created very much as other grants of the kind in India. The "Standing Information" classes them into nine kinds. The student will better recognise them with reference to what he has read of other provinces, if I exhibit them as follows:—

I.—Connected with shrines, temples, and religious persons.

II.—(*a*) In support of schools, bridges, wells, rest-houses, &c.

(*b*) In support of irrigation works, called *dasabhandam*, found only in certain districts.

III.—Held by Government officials, court favourites, &c.

IV.—Held by relations, cadets, personal servants and household priests, &c., of zamíndárs' and chieftains' families (occur in the North Circars and Paleyams of Madura).

V.—Held for police services (*cf.* the ghátwáli and other such tenures in other provinces).

VI.—(*a*) Village, revenue, and police officers for services.
(*b*) Artisans of the village ("watan" lands, &c.)

The work of the Commission consisted in confirming such of the grants as were valid, and placing the title on a sound basis. In most cases these holdings were on condition of service of some kind (for example, in classes IV and V above); the grant may have been only for life, or it may have been liable to escheat on failure of male heirs in the direct line. In most cases all the peculiarities were abolished; the Commissioner proposed terms, and if these were accepted the grant was "enfranchised," *i.e.*, confirmed to the holder on a simple perpetual tenure, a 'quit-rent,' or fixed assessment below the ordinary rate of field assessments, being paid by the holder[1]. A permission was given under certain rules to inám holders to redeem the quit-rent assessment, but it has been very slightly made use of.

II.—The Zamíndárí tenure.

§ 2.—*Its varieties.*

The feature of these is, that the whole land, waste or tilled, within a given estate or area, belongs to the proprietor, whose absolute title is declared by Regulation XXV of 1802.

The assessment is in one lump sum for the whole, and is permanent; but the zamíndár may be liable to cesses, water-rates, and other taxes: it is the land assessment only that is permanent.

[1] The Commission closed in 1869, and the formal duties transferred to a Member of the Board of Revenue for any occasional matters that might still remain to be disposed of. The total number of ináms enquired into and settled was 407,004, affecting an area of about six and a quarter millions of acres. The "quit-rent" now fixed amounted to close upon twelve and a half lakhs of rupees.

There are some varieties of zamíndárí tenure. First there are certain ancient zamíndárís which were in existence before 1802: they exhibit all the above characteristics, but succession to them is governed by primogeniture, younger sons being entitled to maintenance only; and the zamíndár cannot alienate beyond his own lifetime. Examples of this ancient form of estate are the Vizianagram zamíndárí and that of Venkatagiri in the Nellore district.

Next there are ordinary zamíndáris, the result of the permanent settlement of Regulation XXV, sometimes they are held by zamíndárs properly so called; sometimes they are "proprietary estates," such as those of mootahdars,—the holders of parcels of land made into mutthas as already described. These exhibit the characteristics above given, only that there is no primogeniture and no restriction on alienation.

The Pálegára (Polygar's) estates are very similar. Most of them were treated under Regulation XXV, and got "sanads" or title-deeds like all the other zamíndárs. A few, however, called the "unsettled Paleiyams," got no sanad, and for a time it was supposed that the holders had only a life interest; this is now no longer held, and the so-called 'unsettled Paleiyams' are in no way different from other zamíndárís.

All the inámdárs, who have been settled with at quit-rents, also come under the category of "proprietary estates," since they are absolute proprietors of all the lands in their grant, and the quit-rent is permanently assessed.

There are also certain proprietary rights in coffee lands, gardens, and plantations in the Nilgiris, Palney and Shervaroy Hills, and the Wynaad, which are proprietary estates, the revenue being redeemed.

III.—The Raiyati tenure.

§ 3.—*Compared with that of Bombay.*

In Bombay we found that the Revenue Code defined this simple and prevalent form of tenure: it was practically, but not theoretically, a proprietary tenure, and the Act had avoided all

difficulties by describing the incidents, attributes, and limitations of the occupant's right without declaring that the right was in its nature of this or that kind.

In Madras there is no legislative declaration on the subject to be found. The Regulation XXV of 1802, precise as is its declaration of proprietary right, can only be held to apply to those estates which came under its operation. Although the terms of the Regulation are general, and show an intention to apply it to all Madras, as a matter of fact, it was not so applied.

It seems, however, to have been traditionally accepted in Madras that the raiyat is owner of his holding[2], and there has been perhaps some reluctance to interfere with him by survey of his land or enhancement of his revenue, which may account for the late date at which Revenue Survey operations were introduced. Be this as it may, it is said that no practical difficulty has ever arisen, nor has any question ever required decision as to the theory of the raiyat's position. His tenure is practically the same as it is in Bombay; he can relinquish part or the whole of his holding; he can ask for unoccupied assessed land[3]; his tenure is not liable to be put an end to, so long as he pays the revenue assessed under the existing settlement or after revision; his right is also freely alienable and heritable, subject only to the condition of registering the transfer, without which the original holder remains liable for the revenue. The trees on all lands held by the raiyat under his patta—for pattas are issued, as we shall see, for all holdings—

[2] In reporting to Government in 1871, with reference to mineral rights, the Board of Revenue make the following remarks with regard to the right of the ordinary raiyat in Madras:—"The principle has always been affirmed, that the grant of land either under a zamíndár's sanad, *or on an ordinary raiyatwári patta*, conveys all the right, title, and interest which the Government was itself possessed of in such land, subject only to the payment of the assessment." (The italics are mine)

[3] I have not found any mention of the restriction noticed in Bombay, that land must be used for agriculture, unless special permission is given otherwise; nor is there a penalty for occupying without permission unoccupied assessed land—only the assessment at ordinary rates is levied. Even in the case of unassessed land, which is not intended probably to be taken up, the only restraint is that there may be a special and prohibitory rate assessed on it.

stands, and other village purposes; that which is intended to be cultivated, may be applied for by any one, but subject to the preferential claims already alluded to. The status of the unassessed waste, is however a difficult subject, and one which cannot here be discussed. It is only in the hilly country that extensive stretches of unassessed waste are found.

§ 6.—*Tenancies and under-tenures.*

Even under the raiyatwárí system there is room for the springing up of tenancies: the landholder does not always cultivate his own land.

And the peculiar history of some of the lands—for example, the holdings on the West Coast—gives rise to subordinate holdings.

In all ordinary raiyati tenures the tenancies are simply tenancies-at-will, either on terms of money-rent, or what would in Upper India be called batái—a share of the produce, usually half—metairies in fact. On the West Coast, where the Nairs and other conquerors established an over-lordship over the original inhabitants, the latter became virtually tenants under the "janmadárs." The raiyatwárí system, however, does not very nicely regard the distinction between the over-lord and actual occupant; and sometimes the man who holds the patta may be a landlord janmdár or, in South Kanára, a múlavargdár, sometimes he may be a cultivator paying rent to a landlord. The revenue officer makes his record according to actual occupancy, and if there is a dispute it is settled by the Civil Court.

§ 7.—*Tenants on the West Coast.*

In South Kanára, however, tenants of two kinds are recognised, the *múlgaíni* or hereditary cultivator, and the cháligaíni or tenant-at-will. The former pays a rent which is fixed and invariable: the tenancy is permanent, eviction is allowed for non-payment only, and even then after compensation for permanent improvements. These tenants are the descendants of the original holders, who came to terms with and obtained grants from the

over-lord. The tenure is alienable without any permission of the over-lord. Múlgaínis now created may stipulate for express terms. The cháligaíni is the ordinary tenant for a term, often annual, and may be either under a múlgaíni or directly under the landlord.

In Malabar the janmi tenure gives rise to various under-tenures. The kánam is a sort of zar-i-peshgi lease; it holds for twelve years. The tenant advances a sum of money which is in fact security for his rent; and when he pays the rent, he deducts the interest on the advance, and the Government revenue (if he pays it). If the lease is not renewed on its expiry, the advance is repaid, together with compensation for permanent improvements. If the deed is renewed, a fee or deduction on the principal of about 20 per cent. is understood between the parties. A "panayam" is a lease somewhat similar, but is more like a mortgage: it is not for a fixed term, unless some term is expressly fixed in the deed, and improvements are not, as a rule, allowed.

A kúyikánam is a lease for "parambas," or making gardens in forest or waste land.

The above tenures are transferable, and death of either lessor or lessee does not terminate them as long as there are heirs in either family. An ordinary tenancy-at-will is called "verum páttam."

Section III.—The Settlement.

§ 1.—*The Survey.*

Before the year 1853 no regular Revenue Survey had been attempted in the Presidency[6], and the only maps were those prepared by the Military Institution between 1805 and 1820. As regards field measurements, the land revenue demand was either based on the village accountant's (karnam's) unchecked statements, or on measurements made in haste and with imperfect machinery. In the year 1853 an experimental survey of villages in the South Arcot District was instituted. In 1858 a Superintendent of

[6] Standing Information, page 146.

Revenue Survey was appointed, and work commenced. The settlement and demarcation of boundaries as well as the survey was done by the same establishment. The survey is of professional accuracy. Its object is both revenue and topographical. The details of villages, fields, and holdings are only entered into in raiyatwárí districts; villages of zamíndárs and other non-raiyatwárí estates, ranges of hills, forests, and so forth, are excluded, and are surveyed only for topographical purposes on such scale as may be required.

The village boundaries are first settled, small villages are amalgamated and large ones subdivided; next the outline village maps so prepared are sent to have details entered.

The boundaries of every field are permanently marked with stone and every holding is registered. From the village maps are compiled taluqa and district maps. Village maps are on a scale of 1 mile = 16 inches; taluqa maps 1 mile = 1 inch; and district maps 2 miles = 1 inch. The Presidency contains 141,429 square miles[7].

§ 2.—*The field or survey number.*

The size of fields differs from that described under the head of Bombay. There is now no minimum size. But the maximum for the two main classes of irrigated (wet) and rainfall (dry) cultivation is 2 acres and 4 acres respectively,—12 acres for very poor dry cultivation. The field or survey number is adopted for convenience of survey only, so that inside the "number" may be

[7] Up to the close of 1878-79 the following survey work had been done:—

	Sq. miles.	Sq. miles.
Villages surveyed on 16-inch scale	48,478	
Zamíndárí estates, hill tracts, &c., on 4, 2, and 1-inch scale	41,195	
Topographical survey	3,000	
		44,195

Remaining to be done—

Revenue village survey	10,112
Topographical	41,644

The rate of work is about 1,200 miles of revenue survey in the year, and it was expected that the whole would be complete by 1892-93.

several fields; each field is distinguished by a letter, so that one number, say 21, may contain fields 21A, 21B, 21C, and so on.

§ 3.—*No joint numbers.*

I have already indicated that joint holdings are not encouraged, the survey demarcates all shares and separate holdings, and registers them; and a separate patta is issued for each: there is no such thing as one large field with one occupant, who is the registered or principal occupant, with whom the Government deals, unless his co-occupants or co-sharers apply to have their 'recognised shares' recorded. In Madras all separate shares are demarcated and registered separately, and all separate *holdings* are surveyed also; it is only when several fields are all in one holding that they may be clubbed within certain maximum limits and surveyed as one.

There is under such a system still less room than ever for gradations of rights over the same land,—in raiyatwárí holdings I mean—every separate share is a separate thing.

§ 4.—*The assessment.*

The principles may be briefly sketched as follows:—

I.—There is a soil classification which appears at first sight rather complicated.

The main classes are generally as follows:—

(1) *Alluvial and exceptional soils:* rich island soils of exceptional fertility, garden and other soils 'permanently improved' and of better quality than ordinary cultivated land.

(2) "*Regada*" *soil:* the varieties of 'black cotton soil.'

(3) *Ferruginous:* several varieties originating from laterite and sandstone.

(4) *Calcareous:* soils of chalk and lime (these have not occurred as yet in any district settled).

(5) *Arenaceous:* sandy soil originally deposited by the sea on coast districts.

Each of these classes may be subdivided into "clay," "loam," and "sand," according as either element predominates.

It is not necessary, however, to fix a different rate for each of these numerous varieties, for the produce of a considerable number of different soils may be generally uniform; consequently all the soils are "blocked" under "orders" (called *tarams*), each containing from three to five grades or ranks.

Then a "grain value" has to be determined for each class: that is, taking the kind of grain usually grown on the particular class in question, experiments are made (often very numerous) and an average quantity of production per acre is deduced. This average is carefully reduced, so as to be true generally—allowing for bad seasons and fallows.

The Government share of this gross produce is stated to be at a maximum of 30 per cent., the average being about 25 per cent.

This grain share is now valued by commuting it into money on the basis of the average prices ruling on the raiyats' selling months during the twenty years preceding the order.

Thus it may happen that black clay of the 2nd grade, black loam of the 3rd grade, red sand of the 1st grade, and black sand of the 1st may all be sufficiently alike in produce to warrant their all being rated at one rate and placed in one taram,—which may be the third taram in the locality. And then further: the villages have to be taken in groups or circles. Thus I find that wet land in Coimbatore was formed into three *groups*, and all the soils were ordered under one or other of nine tarams. The first taram is only in the first group, Nos. 3 to 7 were common to all groups,—the 8th was in the 2nd and 3rd, and 9th in the third group only.

"The object of village-grouping as regards dry lands is mainly to correct inequalities in respect of proximity to roads and markets; while in the case of wet lands, the principal criterion is the nature and quality of the water-supply. It is not always necessary to form any groups for dry lands. The result of grouping is to decide the application of the tarams. Thus in Coimbatore the wet lands of villages in the first group were assessed according to their classes and grades at the revenue-rates of the first seven tarams; in the

second group, the tarams numbered 2 to 8 inclusive were applied; to the third group, tarams 3 to 9.

"Similarly the two groups of dry lands were assessed at the dry rates of tarams 1 to 7 and of tarams 2 to 8 respectively[8]."

The system will be easily understood by reference to the following table (there is a similar one for dry lands in the groups which I do not reproduce):—

Wet land in Coimbatore.

Soil.		First Group.		Second Group.		Third Group.	
Class.	Grade.	Taram.	Revenue rate.	Taram.	Revenue rate.	Taram.	Revenue rate.
			Rs. A.		Rs. A.		Rs. A.
Black loam	1	1	12 0	2	10 0	3	8 0
Black clay " loam Red "	1 2 1	2	10 0	3	8 0	4	6 0
Black clay " loam Red " " sand Black "	2 3 2 1 1	3	8 0	4	6 0	5	5 0
Black clay " loam " sand Red loam " sand	3 4 2 3 2	4	6 0	5	5 0	6	4 0
Black clay " loam " sand Red loam " sand	4 5 3 4 3	5	5 0	6	4 0	7	3 8
Black clay " sand Red loam " sand	5 4 5 4	6	4 0	7	3 8	8	3 0
Red sand Black "	5 5	7	3 8	8	3 0	9	2 8

[8] Quoted from Mr. Stack's Memorandum on Revenue Settlements (Home Department, Government of India), pages 339, 340.

As an example of the whole process I may take the facts from the Godávari district (Western delta). The grain values for the different crops were taken as the result of some 1,800 experiments. They are given in "Madras measures" of 1½ seer, for each acre :—

Soil.		Dry. Kumboo.		White paddy.
Alluvial		666—466	and so on for "cholum," "raggi," and black paddy respectively.	......
Permanently improved		666—233		1,200—666
Black	Clay	600—133		1,066—433
	Loam	466—133		1,200—533
	Sand	433—166		933—333
Arenaceous	Loam	400—266		733—566
	Sand	333—200		533—400
	Heavy sand	266—100		466—333

One-sixth was deducted for vicissitudes of season.

To obtain the prices, price lists of the selling months were examined, and the rates taken were—

	(Per garce (garisa) (of 4,267 seers).
White paddy	72 Rs.
Kumboo	60 „
(and so on.)	

Next, cultivation expenses were estimated at per acre :—

Soil.		Dry. Kumboo. Rs. A. Rs. A.		Wet. White paddy. Rs. A. Rs. A.
Permanently improved		3 8—3 4	and so on for other crops.	5 8—5 4
Black	Clay	4 0—3 8		5 4—4 12
	Loam	3 4—2 12		5 0—4 8
	Sand	2 4—2 0		5 0—4 12
(and so on.)				

The revenue rate was then approximated to a moiety of the net produce.

The same rate was taken for wet and dry lands, the increase for wet lands being made by adding a water rate.

Thus—

		Maximum. Rs. A.	Minimum. Rs. A.
Permanently improved		5 0	2 0
Black	Clay	4 0	0 8
	Loam	3 0	0 5
	Sand	2 4	0 6
(and so on.)			

In order to apply these figures, by way of example take the kumboo crop on black clay soil.

The full yield by the table is 600 measures, or 900 seers. The average price of the *garisa* of kumboo is Rs. 60; 900 seers is a little over ⅛th of a *garce*. The value therefore commuted per acre is about Rs. 12-10. The cost of cultivation, as shown in the table, is Rs. 4-0. Then the net produce is Rs. 8-10, and the revenue demand if taken at half would be Rs. 4-5, or taking 30 per cent. of the gross produce Rs. 3-12. The maximum rate for the 1st taram of the 1st group of dry land at Rs. 4-0 is moderate.

§ 5.—*Water-rate.*

It will be observed that there is some difference in the method adopted for assessing irrigated lands. In the Godávari and Kistna deltas, the land is assessed at dry rates, and then a water-rate is added for irrigation: but this plan is not followed in other districts (although it was recommended); where there are Government canals a water-rate is levied.

But lands watered from wells are treated as "permanently improved" dry lands[9]; where water has to be applied by the labour of a lift or by baling, a reduction of one rupee is made in the wet rate, except in Trichinopoly, where lands so watered are only assessed at dry rates.

§ 6.—*General description of Madras settlement.*

The following general account of the object of the survey and settlement in Madras[10] will be read with interest:—

"*I. The survey (including demarcation of boundaries).*—The survey combines the operations of a revenue or cadastral survey with those of a perfect topographical survey on a trigonometrical basis. The revenue survey proper, with few exceptions, is confined to land paying land-tax to the Government on the raiyatwárí system. Lands held on tenure other than raiyatwárí, ranges of hills, and tracts of waste land or forest of inferior value, are excluded from the minute detailed field survey, and are topographically surveyed on a scale of two inches to a mile. The operations in raiyatwárí lands are as follows: the village boundaries are first settled, every turn of the line being permanently marked with stone; then disputes are disposed of, irregular boundaries are

[9] Unless, indeed, the Government has established a tank, and wells are situated within the "ayacut;" then the water in the wells is assumed to be derived by percolation from the Government source and a water-rate is charged. (Ayacut—áyakattu—is the limit or measurement around the tank within which the water-supply is given.)

[10] Administration Report, 1875-76.

adjusted, very small villages are amalgamated, and very large villages are subdivided. After these preliminaries, the field boundaries are permanently marked with stone, and every holding is registered. Main circuits of from 50 to 100 square miles are carried out by the theodolite, the angular work being checked by observations for azimuth at about every 50 stations. Village boundaries are also surveyed by theodolite, and check lines within the village forming minor circuits of from 100 to 200 acres are run. While the boundary work is being set up by traverse and plotted, the fields are measured by chain in triangles, so that when the measurement books are received in office, the map is ready to receive the fields. After correction of any errors that may be found to exist, the area of each field is taken by computing scale, and the sum of the area so obtained is compared with the traverse area. The village map is then sent out for insertion of topographical details. Village maps are reproduced by lithography for the use of the Settlement Department.

"*II. The settlement.*—In making the settlement, it is necessary to obtain a general view of the characteristics of each district about to be settled; to ascertain particulars of the climate, rainfall, and physical features of such tracts or divisions as differ from each other distinctly; to search the Collector's records for information relative to the past history of the district, its years of plenty or famine, its land tenures, mode of taxation, and the cause of their gradual progress; to study the relative values of such sources of irrigation as the various tracts possess; to determine how different tracts are affected by roads, canals, markets, towns, hill ranges or seaboard; and to acquire a general idea of the prevailing soils in each tract, and the relative value of such black or red loam, sand, or clay as may be found to exist. Each taluq is next visited, and the revenue officers and leading ryots assembled, and their opinion asked regarding the relative values of villages under such and such irrigation, or in such and such a position; information is also recorded as to the payment of labour, the method of cultivation pursued, the crops grown, the mode of disposal of surplus grain, and the markets mostly frequented. The villages are next formed into groups, with reference to their several advantages of irrigation, climate, soil, situation, &c., and a series of experiments is made to ascertain the yield of the staple grains. When this has been determined, a table is framed showing the yield of each class of soil, and this yield is converted into money by an average struck on 20 years' market prices, with some abatement for traders' profits and for the distance that the grain usually has to be carried. From the value of the gross produce thus determined, the cost of cultivation is deducted, and the remainder or net value of the produce is then divided, and one-half taken as the Government demand on the land. This much is the work of the officer at the head of each party, but in the meantime his Native establishment has been employed in going over the villages and classifying the lands according to soil and circumstance. This operation is carefully watched and checked by the head of the party, who eventually prepares a scheme for the settlement of the whole or part of a district, and submits it (through the Director of Settlement and the Board of Revenue) for the sanction of Government."

Section IV.—The Records of Settlement.

The system does not require all those important statements of rights, village customs, and so forth, that North Indian settlements do; and I find no mention of any record of rights other than the great general list of all fields[1]. This contains their numbers, and particulars regarding their boundaries, area, and assessment, and the name of each holder; this statement is the necessary complement of the detailed village maps.

The register shows every field (*i.e.*, each separately held subdivision of a survey number), however small.

From this a ledger (chitta) is made out, which shows each raiyat's personal account with Government. All the fields held by the same raiyat and the assessment on them are here brought together. A copy of this is given to each man, and constitutes his "patta." These are altered, or entirely renewed, as the case may require, at the time of the annual jamabandi[2].

I have found no mention of any record of subordinate rights or any attempt (for example, in Malabar and Kanára, where there is commonly an over-lordship in land, or in cases of still surviving joint villages) to record the rents and rights of the inferior holders. These matters are all left to the people to settle, and to go to the Civil Court if they are in dispute.

Section V.—Revision of Settlement.

It is claimed for the Madras system that it affords extreme facility for a revision of settlement. The village accountant keeps up forms in precisely the same form as the settlement register, and as this, to begin with, shows each holding, however small, as a separate item, the changes which take place in the holdings,

[1] In fact, an abstract which groups the fields and their assessment by the name of the holder.

[2] In 1877-78 the total number of pattas that had been given out was 2,569,101.

the transfers, successions, and so forth, changes of wet to dry cultivation, waste to cultivated, and so forth, are annually recorded.

Consequently nothing is needed at a revision of settlement but to consider the changes necessary in the revenue-rates; and this is chiefly a matter of calculation. For example, the ascertained grain produce is valued by taking a certain average price as the basis of commutation: this may at revision be altered. It is then easy to see that the existing rates may be raised or diminished accordingly at so much per cent., and the calculation of the new rates is a mere matter of arithmetic. Or suppose that the commutation rate is not affected, but particular fields hitherto placed in one group should be placed in another, owing to their being benefited by a canal, a railway, &c.; those already in the first group would go into a new first group, in which the taram rates would be higher; those in the second would go into the old first group, and so on. Each renewal would affect the assessments by a single rate, which is usually 1 rupee an acre in wet land, and 4 anas an acre in dry land.

As in Bombay, any increase on revision does not take account of improvements resulting from the landowner's own expenditure of labour and capital, but from those made by the State,—the effect of roads, railways, canals, for example, or other circumstances which have enhanced the value of land and its produce independently of his own exertions.

Section VI.—Revenue Officials.

§ 1.—*The District.*

There are twenty-one districts in Madras[3]. The "district" has the same meaning as elsewhere in India. But districts are very large: that of Bellary contains, for example, over 11,000 square miles, and excluding the Madras and Nilgiri districts, which are exceptional, the average is 7,285 square miles, with over 1,800,000 inhabitants and a revenue of about 3,75,00,000 rupees (revenue

[3] Two, Madras and the Nilgiris, being exceptional in character (like Simla in Upper India) and containing one taluq each.

from *all* sources, not only land revenue—the same establishment controlling all). The enormous size of some of these charges has been the subject of remark, and it is probable that a change will be effected.

The districts are presided over by Collectors. As elsewhere, there are Assistant Collectors (classified according to local custom as Sub-Collectors, Head Assistant or Principal Assistant, &c.) and Uncovenanted Deputy Collectors. The district is subdivided into taluqs under a "tahsildár." The number of these in a district varies from three to ten or more (excluding Madras and the Nilgiris). An average taluq is 700 square miles in extent, contains 200 villages, a population of about 150,000, and yields land-revenue of about Rs. 2,50,000. Every tahsildár has subordinate Magisterial powers: he may be assisted by a deputy tahsildár. In every taluq there are officers called 'Revenue Inspectors,' whose functions resemble those of the qánúngo of other parts. Sub-Collectors hold sections or divisions, Head Assistants hold two or three taluqs: the former are more independent, but both are under the control to a greater or less extent of the Collector.

Collectors, as in Bengal, have also Magisterial—but no Civil Court—functions.

§ 2.—*The Board of Revenue.*

There are no Commissioners[4] of Divisions over Collectors. The Board of Revenue is the immediate and final controlling authority, subject to the Local Government. It consists of three Members, with a Secretary, Sub-Secretary, and establishment.

It supervises all Revenue Departments, including Customs, Abkári (Excise), Stamps, and the Forest Department.

§ 3.—*Village Officers.*

Though many of the Madras villages were always of the non-united class, and those originally otherwise have fallen to decay,

[4] There is an officer called the Commissioner of the Nilgiris, but he is a District Officer.

still there is a recognised system of village officers, which is of great importance in the practical administration of the revenue system.

Foremost among them is the headman and the village accountant, the others form the usual artisan staff of a Hindu village. They include the banker, shroff, or notagar; the nirganti (níragante), who superintends the distribution of irrigation water; the totti or taliári (talári), vettí or ugráni (the crop watchman, village peon, or menial servant, the mahár, dher, &c., of other parts), the potter, the smith, the jeweller, the carpenter, the barber, the washerman, and the astrologer.

The headman and the accountant will here alone concern us. The titles of the headman, as might be expected, are as numerous as the languages and dialects in the Presidency[5]. He is usually the largest landholder in the village. In Madras he has small Magisterial and Civil Court functions, besides being the representative of Government in the village, and the collector, in the first instance, of the revenue. Petty cases of assault, &c., are locally disposed of by him, and he hears suits for money and personal property up to Rs. 10 in value; and with consent of parties he can adjudicate civil claims up to Rs. 100. He can also summon, with consent of parties, a village pancháyat and then suits of any value can be decided without appeal[6].

The village accountant, whose functions are of great importance, is the "karnam."

These offices are often hereditary, and cases regarding their succession are enquired into under Regulation VI of 1831 without strict formality, and no Civil Courts can interfere in the matter[7].

[5] Thus we have the maniya káran (Tamil—with variations in Telugu and Karnáta, the "monegar" of reports), patel (Hindi), naidu or náyudu (Telugu), reddi or pedda-reddi (Telugu—in a superior caste of cultivators), peddakápu (Telugu), nátam káran (Tamil—corruptly nautum kar, nátamgar, &c.)

[6] Madras Regulation XI of 1816 refers to headmen and their duties in reference to police duty, repression of crime, &c. According to the words of the Regulation the 'monegar' can set a man "in the stocks" for an affray, &c. This Regulation is still in force.

[7] But this does not apply to karnams in zamíndárí estates who are under Regulation XXIX of 1802.

§ 4.—*Their remuneration.*

These officers may have lands held revenue-free or assessed with a "jodi" or favourable rate of revenue; or it may be that they have only an assignment of the revenue of lands in the occupancy of other persons; consequently disputes may occur[8] as to whether the inám of the office consists in the land itself, or in the right to receive a certain sum assessed on the land from the occupant.

Where there are no inám lands (the "watan" of which we have spoken of in the Central Provinces), there may be dues in grain or money from the village householders.

Rules have, however, been made, the tendency of which is to enable Government to take the payment of the officials of whom it requires public services into its own hands. The Act IV of 1864 enables the villagers to be charged with a cess instead of the old village contributions: this and other measures will enable Government in time, if it pleases, to substitute cash stipends for other forms of remuneration. A village service fund is formed, to which are paid the cesses if levied, and the quit-rent from inám holdings connected with village officers, &c.

SECTION VII.—REVENUE BUSINESS.

§ 1.—*The Jamabandi.*

The yearly assessment of the revenue, called here, as in Bombay, jamabandi, is of great importance[9] and of considerable difficulty.

It is, of course, the essence of a raiyatwárí system that an annual jamabandi should be made: since the assessment is enforced

[8] Heard by the Collector under Madras Regulation VI of 1831. The emoluments of the village officers in land and fees now represent 57 lakhs of rupees (Standing Information, page 137).

[9] And the reader will perhaps think of extraordinary and unnecessary complicity: such a system also must involve a great deal of work for informers; indeed I have seen it stated that informers receiving rewards are regularly recognised. The immense power which this system must throw into the hands of Native subordinates and the opportunities for abuse of power by informers must be very great.

on every survey number and recognised share of it; but as the raiyat may hold more or less land in any year, it is necessary to make out a list of what he actually holds, and what the total assessment he has to pay on that comes to. In Bombay the jamabandi is very simple; there is only the effect of new occupation (which is, of course, rare in districts where the maximum of cultivation may long ago have been attained) or of relinquishment, or of some form of partition: once it is known what survey numbers or shares of such numbers have stood during the year in the name of the holder, the revenue due is the simplest matter of calculation. It is far otherwise in Madras.

In zamíndárí estates there is no variation on account of remissions and so forth. There may be, however, small alterations, as supposing a piece of the land to have been taken by Government for public purposes and the revenue consequently remitted. So it is with the fixed quit-rent in enfranchised ináms.

It is in raiyati lands that the yearly jamabandi is of importance.

First there may be (as in Bombay) the effect of relinquishment, and of the raiyat having occupied new fields: and this may include unauthorised cultivation of assessed numbers or of "paramboka" (poramboke), unassessed waste. But there have also to be considered (1) the water-tax, if any, (2) the charge on second crops.

And there may be also several deductions, (1) the assessment of waste remitted, (2) occasional remissions, (3) fixed remissions, (4) deductions on account of village establishments, and sundry other deductions.

The revenue being thus adjusted, there may be items of "miscellaneous revenue" to be added.

The jamabandi usually is made out after December when the most important crops have been harvested[10].

[10] And consequently many of the 'remissions,' &c., depend on facts which are now past, and the traces of which disappeared: hence the necessity for informers and for ascertainment of fact, and all the disputes and abuses which such an inquest, though inevitable, gives rise to.

The tahsildár has first to see that all the karnams have their accounts ready, and the settlement is then made out by the Revenue-officer in charge.

The karnams make their recommendations in a statement called vajápatti, for additions and deductions, whenever these are ordinary, and according to established rule, and then the tahsildár checks.

They also file a list for the taluq of unauthorised cultivation of assessed or unassessed waste. The Settlement Officer passes final orders in each case.

Then the karnam prepares the "chitta," a sort of ledger of items of demand and remission for each patta. At this time also when new pattas are required, owing to the former ones being worn out or filled up, or such alterations occurring that they are useless, they are given out. New pattas may also be required for land newly taken up. In many cases the old patta serves, but some modification has to be entered on it.

§ 2.—*Causes of change.*

A few words of explanation are required for some of the items mentioned above, as causing increase or diminution in the annual jamabandi.

The effect of relinquishment and new occupation will be understood without further remark.

Unauthorised occupation of land, which in Bombay is prohibited and made punishable, is here allowed; if it is assessed waste, the ordinary revenue assessment merely is charged; if it is "puramboka," a prohibitory assessment may be levied according to circumstances.

§ 3.—*Occasional remissions.*

The remissions call for more detail. In the first place they represent a feature quite distinctive. In Bombay, for instance, the revenue is so calculated as to be fair as an all-round rate, and no remissions are allowed, except of course in cases of famine or extraordinary calamity, and then they happen under all

systems. But in Madras, wherever no crop has been put down, owing to failure of the usual supplies of Government water, a remission is allowed. But the remission is not granted if there has been neglect of the cultivator, or if the land is unirrigated; for then there was no expectation of any supply of water from artificial sources.

Besides this there are "occasional remissions" on the following accounts, which explain themselves:—

1. Shavi (Sávi—Tamil), or crops being withered,
2. Pánibudthi Payamali[1], land injured by flood,
3. Palanastham, "loss of produce" (partial loss of crop),
4. Tírvá-kami ("reduction of rate"), difference between wet and dry assessment,
5. Remission for second crop not raised,

and some others.

The first three are confined to irrigated land, and there must have been no neglect on the part of the raiyat. No. 4 refers to cases where the land is classed as wet, but where circumstances have not enabled the raiyat to have a wet crop, but he has got a dry crop, rather than leave the land absolutely untilled. No. 5 relates to cases where the land is assessed for two crops, but a second has not been cultivated for want of water.

This No. 5 is not usually granted in settled districts, only in the old districts not brought under the modern settlement, where the rates are high.

There are other miscellaneous remissions, such as for loss by diluvion, land taken up for public purposes, &c.

§ 4.—*Fixed remissions.*

Besides these "occasional" remissions there are also "fixed remissions," granted for reasons other than those relating to the season.

[1] I do not know what this word means: there is a Hindi term páímálí, meaning crops trodden down or trampled.

Such are remissions for labour involved in reclaiming lands; for too heavy assessment in unsettled districts; for having to raise water by lift; for planting groves or topes, to encourage which, under the "tope rules," land is for twenty years freed of assessment under certain conditions. There are many other remissions under this head, but this will suffice.

Lastly there are "sundry" or "beríj" deductions. These occur where a deduction is made from the land demand on the raiyat, who then has to pay certain fees to village officers, &c., which otherwise Government would pay; or when he pays to a separate owner an amount hitherto consolidated with the land revenue[2].

In the West Coast districts there is a very peculiar, and to the outsider apparently most unsatisfactory and complicated, way of settling the annual revenue payable[3].

§ 5.—*Additions.*

Lastly, the additional payments under "miscellaneous" are very various: they include revenue on assessed lands taken up without permission, also on puramboka: fees for service of revenue process; grazing tax or grass rent; rent for islands in rivers let out to cultivators; tax on trees; revenue from shifting or kumri cultivation; revenue from coir in the Amendivi Islands of South Kanára, and a great variety of other items.

§ 6.—*Karnam's accounts.*

In order to maintain a system of this kind, naturally the karnam's village accounts must be very complete. A revision of the

[2] The reason for this practice is stated to be "the subtraction from the land demand is a convenient way of adjusting accounts, and is an old practice in this presidency" (Standing Information, page 123).

[3] In Kanára, for example, estates are broadly classed into bharti and kambharti: the former pay the full "tharáo" or assessment; the latter less. Those that pay less are in this wise—(*a*) what is called "Board sifarish," or lands allowed by the Board of Revenue to be such that they cannot be expected to pay the full demand; (*b*) tanki. or estates which are not assessed for a term, but pay a rate fixed annually: this includes káyam kami, or estates allowed a present reduction with a prospect of future full payment; (*c*) wáyada, or lands 'promising' to pay full demand in future.

system was made in 1855. Village accounts are permanent, daily, monthly, annual, and quinquennial.

The most important is the "adangal," or field register, which shows every field, its size, description, assessment, and other particulars; it is in fact the map reduced to the form of a statement. It answers to the khasra of Upper India.

The other permanent accounts consist of abstracts of this register prepared to show particular series of facts.

The daily and monthly accounts show the progress of cultivation and the collection of the State revenue. They include day-books and ledgers, much as in other provinces, showing payments.

The annual accounts are those which form the basis of the jamabandi and have already been alluded to.

The quinquennial accounts are statistical returns showing the revenue-roll, ploughs, live-stock, &c.

§ 7.—*Revenue collection.*

The revenue or "peshkash" of the larger zamíndárís is paid direct into the Collector's treasury, that of smaller estates to the taluq treasury.

In ordinary villages, items of revenue are brought by the raiyats, &c., to the headman, who gives a receipt in a prescribed form. The headman pays to the karnam, who enters it in his day-book, and then credits the different pattadars or landholders, in the ledger and also in the abstract of "demand, collection and balance statement," kept in the name of the individual landholders.

The revenue is payable by instalments falling due on the 15th of certain months according to the orders in force[4]. The money collected is despatched (together with the necessary invoices and forms) to the taluq treasury monthly, or oftener if payments are

[4] Standing Information, page 190, where a list is given. Many districts pay in four instalments, on the 15th December, January, February, and March respectively; some pay in five instalments monthly from November to March; some in six instalments (November to April); a few in seven (November to May); and in parts of Tanjore in eight instalments extending to June 15th.

made so as to require it. Cash is kept meanwhile by the headman at his own risk[5].

§ 8.—*Coercive measures.*

Coercive measures can be adopted under Act II of 1864. Arrears bear interest at 6 per cent., and costs of process are also recoverable. There can be sale of movable property including uncut crops, or sale of immovable property including buildings, or imprisonment of the defaulter himself; either kind of sale may be adopted at discretion, except in the case of zamíndárs with sanads, in which case movable property must be sold first.

Imprisonment is resorted to only when sale fails to liquidate the demand, and there is reason to suppose that payment is withheld, or there has been some fraudulent conduct. Such imprisonment does not extinguish the debt[6].

§ 9.—*Effect of sale for arrears.*

When land is sold under a revenue sale, a perfectly clear title goes with it, all incumbrances disappearing[7]. The purchaser gets a certificate of sale. In the case of zamíndárís, sale requires to be sanctioned by Government.

The revenue demand on the land is, as elsewhere, always a first charge, before any other creditor can be satisfied[8]; even the crops of an under-tenant are not protected, though he has subsequent redress[9].

§ 10.—*Recovery of rents by landholders.*

Zamíndárs, shrotriyamdárs, jágírdárs, inámdárs, and all persons farming lands or land revenue under Government have a power to

[5] I have taken no notice of the amáni collection, whereby in a few localities Government still takes its revenue in kind or a share (Rájabhogan) of the produce, or the Ulágú method, which is now extinct, except in one hamlet in Tanjore.

[6] See Madras Act II of 1864, section 48.

[7] *Id.*, section 42.

[8] *Id.*, sections 11 and 17.

[9] The tenant deducts the value for any rent he has to pay to the landlord (section 11), or he may pay up the revenue and so stop the distraint and recover afterwards from his landlord.

recover rents by a summary process under Madras Act VIII of 1865; the conditions are that the process must be put in force within a year from the date of the rent being due, and the tenant must have been given a "patta" expressing the rent he has to pay (unless both parties have agreed to dispense with this). No Civil Court has jurisdiction in those cases. All other landholders who may have tenant's under them, may make use of the same process, but only if they have a written agreement from their tenants; not otherwise.

After serving a notice, the landlord may distrain crops of his own accord, only he must not do so beyond what is necessary, and he is bound to send notice to the Collector of his proceedings. For the tenant's remedy and all other details, the Act itself must be consulted.

All rent cases are heard under this Act by Collectors, and not by the Civil Courts.

§ 11.—*Local Funds.*

Under Act IV of 1871, a fund is constituted for the construction, repair and maintenance of roads and communications, and for the diffusion of education and other objects of public utility calculated to promote the health and the comfort or convenience of the inhabitants of places not included within the limits of any municipality. The funds are raised by a local rate or cess, besides fines, contributions, sale proceeds, and so forth. Certain unexpended balances of funds under former Acts were also made over, but these had to be devoted to the branch of work for which they were originally designed.

The fund is now maintained by a cess, not exceeding one ana in the rupee, on the 'rent value' of all occupied land, by a certain tax on houses, and a toll payable on roads maintained.

The 'rent value' is calculated specially for the purpose of the levy of the cess in a manner described in section 38 of the Act.

The fund is managed by a Local Board, of which the Collector is *ex-officio* Member and President.

§ 12.—*Partition.*

It is not necessary to allude in detail to the case where a zamíndárí is broken up; this can be done at the will of the owners, the only interference of the law is regarding the assessment to Government revenue of the portion separated, and this is regulated by Act I of 1876.

Partition as a head of revenue business is not alluded to as it is in other provinces, because the system here tends to treat every holding as separate from the beginning, to demarcate separately every share as a several holding, and issue a second patta. When a joint patta is issued the land cannot be partitioned without the consent of all, and then it is complete both as to right and as to responsibility for the Government revenue.

§ 13.—*Alluvion and Diluvion.*

I have found no law relating to this subject, but I gather that remission is allowed for revenue where 10 per cent. of the area is reduced[10], and so *vice versá* when it is increased. Islands belong to Government and are specially leased out[1].

§ 14.—*Maintenance of boundaries.*

The importance of the permanent maintenance of the boundary marks of villages and fields is exceptionally great under a raiyatwárí system.

In Madras care is taken in the registers to enter such a description of the direction of the boundary lines that the limits of a survey number and of its sub-divisions can be traced even if the marks are from any cause obliterated.

But Act XXVIII of 1860 provides for the maintenance of boundary marks. The Act indeed deals with the whole subject *ab initio,* giving power to determine the boundaries both of villages and fields and to settle disputes.

[10] Standing Information, page 128.

[1] *Id.*, page 126. This is one of the items of miscellaneous land revenue.

Government, it is provided, bears the cost of marks for extensive hills and jungles in Government lands; the owners bear it in other cases. A penalty of Rs. 50 for each mark may be inflicted on conviction before a Magistrate for erasure of or wilful damage, &c., to boundary marks; half goes to the informer and half to the cost of restoration. If a mark disappears, and no delinquent can be found to whom the damage is attributable, the cost of restoration is divided between the occupants of the adjacent lands according to the order of the Magistrate investigating the case.

§ 15.—*Law of Revenue Procedure.*

There is no general Act relating to revenue business, but it is an understood thing in Madras, that in all business (not being regular civil or criminal cases, or cases regulated by some law) every one can proceed by petition for what he wants: if he fails in the first instance he can go up in appeal from the lowest grade to the Governor in Council[2]. The Acts (of the Madras Code) to which the student will have to refer in connection with Revenue business and procedure, are Acts II of 1864, VIII of 1865 (Rent recovery), XXVIII of 1860 (settlement of boundary disputes, and maintenance of marks).

[2] Standing Information, page 75.

BOOK V.

THE PROVINCES UNDER SEPARATE SYSTEMS OF REVENUE.



INTRODUCTORY.

The Provinces of British Burma, Assám, and Coorg, widely as they differ, must be included together in the brief closing book of this Manual. They cannot be altogether omitted, for they all contain forest estates; and forest officers would find a Manual which ignored them strangely wanting. These provinces are essentially forest countries. Forest property is in Burma one of the most valued heritages of the State; those great tracts which yield teak—perhaps the most generally valuable timber in the world—are only now in the first stage of organisation, and there is no province under the Government of India where forest estates will form a larger or more important feature in the distribution of landed interests, or where the forest officers will more need to be well acquainted with the Revenue system of the province.

But hardly one of these provinces has yet a fully developed Revenue system. They could not therefore be brought under either of those chapters in which I have endeavoured to delineate the main features of the Revenue system of Bengal, or that system which, under several modifications, has prevailed over the North-Western Provinces, the Panjáb, Oudh, and the Central Provinces. In one sense, indeed, the absence of any theory of zamíndárí or village-community rights of property, makes it possible (especially in the case of Assam) to class the existing revenue settlements as "raiyatwárí;" but, on the other hand, the system bears no resemblance to that which Sir Thomas Munro designed for Madras, or which the energy and skill of the Survey Department has developed in the Bombay Revenue Code of 1879.

I must therefore cast such brief description as I have to offer into the shape of detached chapters devoted one to each province.

CHAPTER I.

BRITISH BURMA.

SECTION I.—PHYSICAL DIVISIONS OF THE COUNTRY.

§ 1.—*Arracan.*

IN an introductory chapter I have already briefly indicated the history of the formation of this province.

Its physical features will for many years, perhaps for ever, give a certain character to the land-tenures and the Revenue system.

The country is divided almost naturally into provinces, separated in most cases by deep rivers or well-marked mountain ranges. Arracan, the most northern province, lies along the coast, extending as far as Chittagong, while inland it is separated from Native Burma and the rest of British Burma by a long and broad range of hills. The hill portion of Arracan is excluded from any Revenue law, since the tribes are wild and practise nothing but "toungyá" cultivation,—that destructive system which seems natural to races born in hill jungles, of temporary cultivation effected by clearing and burning in succession, such tracts of forest as offer a suitable soil for the purpose.

In the flat districts near the coast are alone to be found the rice plains, which give any possibility of a permanent property and a Revenue system.

§ 2.—*Pegu.*

For the rest of British Burma, the frontier is an arbitrary line drawn across from west to east, which, speaking roughly, strikes off from the Arracan hills about half-way down the length of that range or "Yoma[1]."

[1] The ranges are known in Burma by the appellation Yoma, which means "backbone."

The province so defined exhibits a succession of the same features. Descending from the slopes of the Arracan Yoma, we come to the broad valley of the Irrawaddy with its villages and permanent cultivation, which is almost entirely rice. This valley is again closed in by a lower central mountain range called the Pegu Yoma, where again we find temporary toungyá cultivation, and in part of it, at least, Karen tribes. This Yoma is the site of a large number of our most valuable teak forests. Then again, still going east, we have another valley, but far narrower than the Irrawaddy valley—that of the Sittang; followed again by a wider and vastly higher range of hills, also full of forests and toungyá cultivation, till once more we descend into the valley of the Salween. The river here, for a part of its course, forms the boundary[2]. The hills beyond, rich in teak, are in foreign territory; efforts have from time to time been made to get the chiefs to deal fairly in the matter of timber. This is of importance, since the timber, though brought from forests over which British officers have no control, is nevertheless floated down the Salween under the British Forest Law, and frequent disputes as to ownership (arising from the arbitrary dealings of the chiefs in the forest) have to be settled at the British timber depôt near Moulmein.

§ 3.—*Tenasserim.*

The Tenasserim province is a long narrow strip of coast country forming an appendage to the south-east of Burma, as Arracan forms a similar projection to the north-west. It is hilly, and covered with more or less tropical jungle. Nearly all but the level alluvial land on the coast, if inhabited at all, is cultivated by "yá" clearings.

Thus we have for the theatre of our Revenue system, a country presenting alternate hill ranges in which migratory tribes clear the forest, take off a single crop (perhaps two), and then remove to a

[2] The boundary leaves the river near the junction with the Mobye river and turns a little westward through hills and unexplored country, and is in fact imperfectly known.

fresh clearing, and rich alluvial valleys where the dense jungle has gradually been cleared away, and villages have been established permanently, each surrounded with a wide expanse of rice fields, and occasionally diversified by groves of palm, orchards of fruit trees and vegetable gardens.

§ 4.—*The Revenue system.*

The notification of 31st January 1862, which united these provinces into one Chief Commissionership, states that they are all "Non-Regulation" provinces, and that their "revenue system is in principle essentially the same. It is founded on the system which prevailed under the Burma Government, and the modifications adopted in each province from time to time since it came under British rule are due less to any variety in the conditions of the three provinces[3] than to the differing views of the authorities by whom they have been successively administered."

§ 5.—*The Land Revenue Act.*

The Land Law of Burma is Act II of 1876 and the Rules made under it[4].

The "Hill Tracts district" of Arracan is not under the Act[5], and the "Karen hills" sub-division of the Tounghoo district has been also exempted by notification[6].

[3] *i.e.*, (1) Arracan, (2) Pegu, (3) the Martaban and Tenasserim provinces taken as one, as they were (and are still) under one Commissioner.

[4] The Act was declared to come into force on 1st February 1879 by a notification in the *British Burma Gazette* of that date.

[5] The Arracan hills are entirely governed by Regulations VIII and IX of 1874, issued under the 33 Vict., Cap. 3. One of these provides for the administration of civil justice; the other, called the "District Laws Regulation," declares what Acts, &c., are in force, and disposes of the subject of land revenue in two sections. The Revenue system is therefore easily explained. Measured land in the plains (river, garden, and palm grove) pays a rate from one rupee down to 8 annas an acre, according to the Deputy Commissioner's assessment; "toungyá" pays one rupee *per family*; one rupee is also levied per family on all who have paid either tribute or capitation tax, and the latter is abolished accordingly.

[6] No. 11, dated 1st February 1879.

SECTION II.—THE LAND TENURES.

§ 1.—*General idea of right in land.*

It will be most convenient to reverse the order in which I have hitherto described the Revenue system of the provinces and to describe first the way in which land is held. This subject is dealt with first in the Act, so that I am following the legal order. In pursuing this study we shall find no parallel to the case of land-tenures of India[7].

It is probable that in Burma the popular feeling or custom regarding proprietary right, as is so commonly the case in jungle countries, is connected with the fact of first clearance and subsequent occupation. The labour of clearing the fertile but densely overgrown jungle land is so great, that the undertaking of the task fixes in the popular mind, the feeling that permanent possession of the land is its natural result. At first, no doubt, when the several tribes of the Burmese and Talaing nations settled in the Irrawaddy valley they lived in a state of society very similar to that still shown by the hill tribes. Cultivation was begun by the clearance of the ground; but the land once prepared, permanent rice cultivation was possible, and therefore there was no occasion to abandon the spot after a crop had been taken off and seek a new clearance, as was the case with the toungyá cultivation to be described presently. Consequently plough cultivation soon came into fashion, and the right which custom recognised in the man who first cleared the jungle, was still further strengthened when he continued to cultivate the same field. Among the tribes (Karens and others) who still practise shifting cultivation in the hills, the idea of individual right is confined

[7] I am indebted to Mr. G. D. Burgess for a pamphlet by General Phayre (Rangoon, 1865, now scarce and out of print) called "A few Words on the Tenure and Distribution of Landed Property in Burma," and a Minute by the same author on the Land Assessment recommended for the Province of Pegu, dated June 1858.

to the field as long as it lasts; but it would seem that, in some parts at least, there is a system practised by some Karens under which the roving cultivation is confined to a limited and well-known tract of country. Here probably (though such a right is not recognised by law) there is a feeling of tribal property in the whole area. It is portioned out by custom, the plots cultivated by toungyá being cut and cleared in an established customary rotation.

The idea then of proprietary right does exist in Burma, and it is dependent on the fact of clearing the jungle; and the right of the sovereign to a tithe of the produce is also recognised. General, Phayre informs us, on the authority of the *Dhammathat*, or laws of Manu (a work which has nothing to do with the Hindu Institutes of Manu, well known through the translation of Sir William Jones), that the people originally agreed to confer on their elected king a share of the produce. So that in Burma the Government revenue is dependent on the same principle as in India, though it may have originated in a different way, namely, that the king has right to a share in the produce of the land[8].

§ 2.—*The Burmese village.*

In Burma, therefore, the villages consist of independent holdings. The holdings may, indeed, be connected in some way, because the Burmese law of inheritance gives rise (like that of India) to a joint succession. Not only the sons, but the widow and daughters are entitled to shares; and thus holdings become grouped. Besides this, persons undertaking agricultural clearings, naturally settle together in more or less connected groups, being often connected by relationship, or associating together for mutual protection and society; it is said that in many places the feeling of the

[8] "But the king, who is master, must abide by the ten laws for the guidance of kings; and although property which has an owner is called the property of the king, yet he has no right to take all. Rice fields, plantations, canals, *whatever is made (or produced) by man* * * * * *he has a right to.*" (Quoted by General Phayre from the 6th book of the Code.)

Burmese village is decidedly "clannish." But the natural circumstances of relationship and co-sharing are the only bond[9].

In jointly owned lands actual division does not always take place, often not for generations together. In some cases a wealthy shareholder buys out the interest of the others, but generally a manager controls the whole on behalf of the co-sharers, or different portions of the land are tilled and held in succession by the various members of the family.

There is a feeling in Burma against the permanent alienation of land; and mortgages, though worded so as to imply that redemption is not to be claimed, have been, after many years even, redeemed and given back to the original family.

The idea of renting land, or allowing its use for a payment, was only partially and locally admitted; and even then the rent was a share of the produce in kind. Modern progress will, however, tend to introduce the idea of tenancy, and the "Directions" contain instructions for the record of tenancy holdings. Rent is, however (except that part of it which goes to cover the Government revenue), paid in kind.

In these customs of landholding, at least where cultivation is permanent, we do not observe anything like an allotment of large areas of land to a tribe, the whole area, whether waste or cultivated, belonging to that tribe. Under our present settlements a portion of waste is allowed in with the holding, in order to provide for and encourage the extension of cultivation; but that is a matter of express Government arrangement.

§ 3.—*Modern origin of most tenures.*

Title to land originating, as I described, in mere occupancy by clearing, and then descending by inheritance or transfer, the origin of most holdings is recent and very simple. In our own times

[9] In some parts the attempt was made to introduce a lump assessment for a whole village or group of holdings, with a common responsibility for the whole; but the attempt failed and was abandoned. (Directions for Settlement Officers, Burma. page 1.)

a great deal of land has been simply "occupied." A lease or a grant may have been given, allowing the land to be held revenue-free for a term of years; or it may have been held on yearly tenure, or by some verbal permission of the local revenue official. The holding only extended to what was actually granted and occupied.

§ 4.—*The right to waste land.*

And the waste land remained without any very definite *status* being acknowledged. It may be held to have belonged to the king; it certainly did not belong to the adjoining cultivated lands or to any village body or group.

There is always a tendency in Oriental countries, when once the right of the king to a share in the produce is recognised, to go further and assume that the king is owner of the whole soil. As this is a sort of supremacy which does not override the customary right of those who have occupied definite tracts—especially those permanently cultivated—it most naturally takes effect as regards the waste or unoccupied land.

Instances are, indeed, not wanting where the king will violently take possession of occupied land, when his necessity for it is great; but such an act is looked upon as an arbitrary exercise of power, and the extract from the Buddhist law already quoted in a note shows this to be the case[10].

The waste, however, was probably left with no very defined status. While it seems to have been recognised that anybody might take possession of a piece of waste and clear it, and so acquire the customary title,—and the king was probably only too glad to see this done, since his right to a share in the produce arose. Side by side with this appears the right of the king to make gifts out of the waste, and of his officers to make special allotments of it. This appears clearly from the fact that of the seven ways of acquir-

[10] Nevertheless General Phayre states (Minute, page 7) that the "right of subjects to land is always subordinate to the reservation of Government right."

ing land, recognised by Burmese jurisprudence, "allotments by Government officers" and "gifts by the king" are two[1].

§ 5.—*Modern definition of right in land.*

When population increased and the settled Government of our rule began, it became necessary, first to define the right of land-holders, and next to assert the absence of any private right (which meant that the Government alone had the power of disposal) in the unoccupied or waste land.

It is with these subjects, as far as land tenure is concerned, that the Land Act of Burma (Act II of 1876) is concerned.

It will be understood that I am now speaking only of rights in permanently occupied land. Where toungyá cutters are still found to cultivate in the hill ranges, it is only by sufferance; they have no recognised right.

§ 6.—*The Land Act.*

The right recognised by law refers, then, only to land permanently occupied. It may be regretted that the Act was not made much more simple, as it undoubtedly might have been. As it is, it is in the highest degree technical, and introduces the phraseology of Western law,—'easements' and 'rights to the soil products' as distinct from soil ownership—which must be not only wholly unintelligible to the simple Burmese, but equally so to every one not trained to understand technical documents. It will be absolutely necessary for me to interpret rather than quote the Act. In doing so I shall endeavour to state all the main features, but details of procedure (and some minute distinctions, the object of which it is not easy to divine) must be obtained by a study of the Act itself, when its general purport has been apprehended.

[1] The other five are—inheritance, gift, purchase, clearing the virgin forest, and ten years' unchallenged (as we should say 'adverse') possession while the former owner knew the possessor was working the land (Minute, page 7).

§ 7.—*General status of the land.*

It is not stated, but is clearly implied, and is a fact, quite beyond dispute, that at the present day, all land in Burma is the property of, or at any rate at the unfettered disposal of, the State, *unless* some private person has acquired a "right" to it.

§ 8.—*Right in occupied land.*

The second part of the Act—"Of rights over land"—describes how such a right can be acquired. It applies to all lands generally except those mentioned in section 4, for these obviously do not require to be dealt with. Land which has already by law been declared a forest estate; land dealt with under the Fisheries Act[1]; the land occupied by public roads, canals, drains or embankments; the land included in the limits of any town; the land actually occupied by dwelling places in towns or villages; lands within the limits of civil and military stations; and lands belonging (according to the custom of the country) to religious institutions and to schools,—these are naturally excluded from being dealt with, and the proprietary right in them vests in the State, the owners, or in the institution, as the case may be, according to existing laws.

But *all other* land can only be subject—

(1) to rights created by grant or lease of the British Government;
(2) to rights or easements acquired by prescription;
(3) to rights created or originating in the modes prescribed in the Act.

The last named are rights over land which are practically proprietary, though they are called in the Act "rights of a landholder."

Of course any right lawfully *derived* from one of the three rights holds good also. If it is lawful to sell or otherwise transfer the

[1] No one who has been in Burma even for a few days needs to be reminded how important is the fishery question in a country which is intersected by rivers, streams, and creeks, where the population universally consume fish, especially in the form of salted and fermented fish—the well-known gnápí of Burma. The allotment of areas for fishery sites is provided in Act X of 1875.

right, or if by inheritance a man succeeds to it, the right holds good to him as it did to the person from whom it was lawfully acquired.

To sum up this shortly, it means that, generally speaking, as regards private rights, the land to which part II applies is *primâ facie* without any rights of private persons; but the law is prepared to recognise all rights which the Government has given by lease or grant; rights, not being rights of ownership, but often necessary to the enjoyment of property, such as rights of way, use of water, right of lateral support, and so forth; lastly, all rights of "land-holders," a term to which the law attaches a special meaning, of which hereafter; and all rights derived legally from these, *e.g.*, by transfer or succession.

§ 9.—*Examination of the rights recognised: right by grant, &c.*

Let us proceed to notice more in detail those rights which are thus recognised.

The first needs but little remark. If a lease or a grant of land has been issued, it of course gives rise to a right exactly such as the terms of the document declare.

§ 10.—*Rights to surface products and to easements.*

The second has given rise to some discussion; the right was declared to be such a right as is described in sections 27 and 28 of the Limitation Act (IX of 1871) then in force.

These sections only contemplate such rights as are called in English law easements[3], and these include rights of way, rights to use of water in streams flowing through the land, rights to use water in springs, pools, or tanks, rights to receive or not to receive drainage water off your neighbour's land, to have a passage for irrigation water across his land, right to have the natural support of the soil next to your field, and so forth. But there is nothing else included. These rights, whether called by the term 'easements' or not, and whether subject to technical rules or not, are natural rights, and often absolutely necessary to the enjoyment of a man's

[3] See my Manual of Forest Jurisprudence, where this subject is fully explained.

property. You must have a way to get to your land, and be able to prevent a neighbour blocking up a stream which runs through both lands; you also require the soil to be maintained as it is, and that your neighbour should not excavate his land so as to make yours fall down or in, at the margin. But the Burma Act section is limited to these rights, and no such thing as a right to graze, to gather fruits, or get firewood or timber was recognised by the Act.

But when the sections quoted from the Limitation Act of 1871 were superseded by the present Limitation Act (XV of 1877), the term 'easement' was extended to include rights to the produce of the soil—or, to use the words of the Act, to include the right to appropriate "any part of the soil belonging to another, or anything growing on it, attached to it, or subsisting on it."

Consequently it is only since 1877 that a right to these products can have arisen. And it takes twenty years' adverse enjoyment for any such right to ripen into a prescriptive right, consequently no such rights can yet have grown up. As regards land destined to be brought under the plough, this is of no great importance; but it had a serious bearing on forest rights, as the question which might be raised in connection with such rights has since been set at rest by a section in the Burma Forest Act. It is unnecessary to pursue the subject here.

§ 11.—*The landholder's right.*

But what is the third or "landholder's" right? Practically a proprietary right. If a person (not holding under a grant or order of Government which itself determines the extent of right) has continuously held *possession* of any culturable land[4]

[4] Possession is elaborately defined by section 3. Possession may be by actual occupation by the person himself, or his agent, servant, tenant, or mortgagee; or there has been no such actual occupation, but still there may be constructive possession, *viz.*, that the person or his agent, &c., paid the last preceding year's revenue; or if the land is now lying fallow in the ordinary course of agriculture, that it was last cultivated by the person and his agent, &c. These last grounds will not argue possession if the land is actually occupied by some one else, nor if the land has been relinquished by notice; a man might be out of possession, and yet try and oust an existing occupier, on the ground that he paid the last revenue.

for twelve years, and has continuously paid the revenue due thereon, or held it exempt on express grant, he is allowed to have acquired a permanent heritable and transferable title. It will not, however, do for a man to be able to assert former or ancient possession if that possession came to an end twelve years before the Act came into force (1st February 1879). Possession on the other hand is not broken by a succession or transfer. If A has held for seven years, and then sells to B, who has held for five, B can put in a twelve years' possession. So if B has inherited from A. In the same way as regards the condition of paying the revenue. The payment will hold good if it has been made by a tenant or other person holding under the person in possession. The 'landholder's right' is not called proprietary, because it is restricted not only by the duty of paying revenue, taxes, and cesses, which is a restriction on all property in land in India, but also by the fact that all mines and mineral products and buried treasure are reserved to Government, as also the right to work or search for those products on paying compensation for the surface damage.

A person who is legally a "landholder," if he happens to be out of possession when the Act came into force, may, within a limit fixed by section 9, recover possession; and so if he has been in possession when the Act came into force, and then voluntarily abandoned the land, he can get it back within three years. After the limit has passed in either case, the right is extinguished. When an application is made to recover possession under these terms, the Revenue-officer can either grant the application himself or refer the claimant to bring a regular suit in the Civil Court within two months. After 1st February 1882[5], no one will be able to abandon his land voluntarily *for a time* (though he may do so *finally* if he likes),—unless he applies (under section 12) to the Revenue-officer to take over his land on special conditions. This section 12 is quite peculiar to Burma. On application being made, the Revenue-officer, if he is satisfied that the person has the *status* of landholder, publishes a notice of the temporary relinquishment,

[5] *i.e.*, after three years from the Act coming into force (section 11).

and then can let or otherwise dispose of the holding. The landholder can get back his rights at any time within twelve years by application and publication of notice as before. But he cannot regain possession except at such a season as to let the intermediate occupier gather in the crop that is on the ground, and he must also pay for any improvement which the holder may have made, such as embankments, planting, &c.

Any "landholder" can obtain an authoritative declaration that he is such, by applying to have his right recorded on a register provided for the purpose, and getting a certificate of the record. There are of course provisions in the Act regarding the cancelment and calling in question of such record.

§ 12.—*Disposal of land by Government.*

Such being the recognised rights in land, the Chief Commissioner has power to make rules for the disposal of all lands to which this second part of the Act applies, and which are not either already the subject of a grant or lease, and which do not belong to landholders[6]. The existence of "easements" does not of course prevent the land being granted, or leased, or disposed of, subject to such existing right of easement.

The rules for the disposal of lands are found in the Revenue Rules published in the Gazette of 1st February 1879. I do not propose to describe them in detail. No land that is wanted for any State purpose (which of course includes land which the Forest Department would desire to preserve as valuable forest) is to be disposed of, and land within a radius of four miles from any town requires a special sanction for its disposal. The rules then contemplate (1) the grant of *ownership* (which differs from the "landholdership" of the Act)[7], (2) the grant of thirty *years'* leases. Grants

[6] Section 18. These rules deal with permanent disposal or temporary use, but have no reference to toungyá cutters: these are dealt with by special rules.

[7] Since it is a perpetual grant, not a mere prescription arising from a continuous 12 years' squatting, it also carries with it the right to minerals, and is usually accompanied by the exemption from revenue for the first years of occupation, of which mention is made afterwards in the text.

and leases require the orders of the higher grades of Revenue-officers according to their extent. Thus the Native Revenue-officer (Thoogyee) can, with the approval of his Deputy Commissioner, make a grant of five acres; but a grant exceeding 100 acres can only be made by a Deputy Commissioner, with the approval of the Chief Commissioner. The mode of making grants, the disposal of objections, the form of deed, and other such particulars must be learnt, if necessary, from the rules themselves[8].

§ 13.—*Exemptions from revenue.*

There are exemptions from revenue for various periods in the case of grants or leases for garden land and for fruit trees and palm groves, according to the value of the plantation; and in the case of land which will have to be cleared, according to the labour involved in clearing, and the size or density of the growth.

This exemption is necessary to encourage settlers, as it is obvious that during the first year, and sometimes longer, there is nothing but outlay and expense, and the grantee has not the means of meeting the land revenue till he reaps the first fruits of his labour.

§ 14.—*Temporary leases.*

Where it is not desirable or possible to make either grants or long leases, temporary or yearly leases (renewable at the end of the year) can be given out under section 19 and the rules made under it[9].

Penalties are provided for all unauthorised squatting or occupation of land[10], so that there cannot now be any unauthorised taking possession of land as in former days, which will ripen by prescription into a "landholder's" title.

§ 15.—*Grazing allotments.*

Section 20 of the Act contains a provision which somewhat resembles the rules in Berar and Bombay. Instead of disposing

[8] Revenue Rules 1—19 and forms at the end.

[9] *Id.*, 20—27.

[10] See Act, section 59.

of all available land under section 18 or 19, if it is considered that existing villages would be hard-pressed by disposing of all the land under these sections, the Deputy Commissioner can reserve or allot suitable tracts for grazing, subject to the Commissioner's sanction. Notice of this is given, the land is demarcated, and thenceforth cannot be devoted to any other purpose, till, upon sanction being obtained, a notice cancelling the allotment is published[1].

§ 16.—*Toungyá cultivation.*

I have already remarked that toungyá cultivation is not touched by the rules just described. No doubt the land over which "yás" are cut in the hills are mostly subject to the Act, but the rules under section 18 do not touch it. It is to be dealt with by rules which the Chief Commissioner is bound to make under section 21[2].

In many cases it is absolutely impossible to ignore the practice of such cultivation; but it is wisely left to Government by rule to determine what right, if any, shall be recognised, and how the cultivation is to be carried on. It will be desirable therefore to make some remarks on this system of toungyá cultivation.

§ 17.—*No right is acquired.*

The important feature to be remembered is that this sort of cultivation is not held to give any right whatever; unless, indeed, some right is expressly conceded by the rules made under the Act on the subject. Neither can there be such a thing as the right to cultivate in this way, nor does any right of occupancy in the soil itself[3] arise from any number of years' practice of this method of cultivation. While, however, Government is perfectly free to put a stop to this cultivation altogether, it is at the same time bound to exercise a wise discretion in the matter, and therefore

[1] Revenue Rules 28—30.

[2] At the date of writing this such rules have not been issued. In fact, no subject could present more difficulty, since the question of toungyá has to be dealt with in connection with forest reservation.

[3] As expressly apparent from sections 7 and 22 of Act II of 1876. See also the Forest Act (XIX of 1881), section 11.

the practice has not been stopped nor have rules been as yet made. In point of fact, the toungyá question is gradually being settled under the procedure for preserving State forests, and it is much more satisfactory to do it in this manner than to make a hard and fast code of rules under section 21.

§ 18.—*Nature of toungyá cultivation.*

As I remarked before, it is the original clearing of the land that, in the Burmese idea, gives rise to a proprietary right, but that clearing should be followed by continued occupation. Now, in the hilly tracts of all the mountain ranges, it is rarely that land once cleared is permanently occupied; it is sometimes the case, as will presently be noted. But, speaking generally, the clearance made, the material is burnt and the ashes dug into the ground; and when the crop has been gathered, the site is abandoned for another, which in its turn is treated in the same fashion. It entirely depends on the restriction which circumstances place on the migratory movement of the families or tribes, whether the land, once cleared, is again returned to after a long or short period. It is so returned to as a rule, but that period may vary from forty years and more, to six or seven years, and even less.

This in fact depends very much on the area available. If it is large, the same land may not be returned to for twenty, thirty, or forty years; but when the area is limited, as in the Prome hills, the rotation is much shorter: and then the jungle that is restored is poorer in character.

In these cases the mischief done is very great, because no effort is made to prevent the fire, which is kindled in order to burn the toungyá refuse, spreading far and wide over the adjoining forest.

§ 19.—*Demarcation of toungyá grounds.*

In a great many places the reserved forest selection has gone over the grounds where toungyá cultivation is practised. In these cases it is now the practice to demarcate certain areas for toungyá

cultivation within the forest. As long as it is possible to avoid the spread of fire from these grounds to the forest, the existence of such areas is no great disadvantage, while the presence of the Karens themselves, who follow this method of agriculture, is a positive advantage to the forests.

§ 20.—*Suppression of the system.*

Nevertheless, under the best circumstances, toungyá cultivation is a most wasteful and barbarous method. It gives a minimum return with a maximum waste of space or land area, to say nothing of the destruction of useful material. A terraced and irrigated field, properly managed, will give crops far heavier than the best toungyá; and the ultimate exchange of toungyá to permanent fields inside the forest line, or to village settlements in the plains, is an object to be steadily pursued[4].

There are, no doubt, places where the toungyá cultivation is the only possible method. Moreover, the dense jungle far removed from centres of habitation or lines of export has no practical value. But in places where forest is valuable, and where it is possible to introduce improvements, there it requires steady and sustained effort to restrict the practice. This can be done, not by sudden orders for the practice to cease, but by the plan of demarcating toungyá areas, and making steady efforts to prevent the fire spreading beyond the areas. It will also be possible to encourage permanent cultivation, as already indicated.

§ 21.—*Custom of toungyá in the hills between the Sittang and the Salween.*

This account of toungyá cultivation would be incomplete without a notice of a very curious instance of a tribal settlement in which this method of cultivation has been reduced to a system, and which was first noticed and described by Mr. Brandis, Inspector

[4] See a valuable Report on Forest Administration in Burma (20th January 1881) paras. 344 and 362

General of Forests to the Government of India. The interesting point in this tenure is, that here we have a custom of toungyá cultivation which is confined to certain limits, which is based upon a permanent occupation of a definite area, although the people recognise that the State is still the ultimate proprietor of the soil. I shall give a description of this tenure in Mr. Brandis' own words :—

"In certain districts on the hills between the Sittang and Salween rivers the population which subsists on toungyá cultivation is so dense that they are obliged to cut their toungyás on a short rotation, returning to the same piece of ground after a period of from three to seven years. As an instance, I may mention the hills on both sides of the Myit-ngán stream, a southern tributary of the Thouk-ye-gát river. These hills are inhabited by Karens, who live in large villages. The boundaries of each village are most distinctly defined, and jealously guarded against encroachment. Twenty-two years ago I had known these hills well; and when I visited them again in February 1880, I found the same system of cultivation and the same old customs regarding village boundaries and the occupancy of land.

"These Karens have two classes of cultivation. Along the valleys and ravines are extensive gardens of betel-palms, with oranges and other fruit trees, carefully irrigated and admirably kept. These gardens are strictly private property; they are sold and bought, and on the death of the proprietor they are divided in equal shares among his children. Ascending the dry and sunny hill-sides from these cool and shady valleys,—with their streams of clear water, the golden oranges half hid by the dark-green foliage, overtopped by dense forests of tall and graceful palms, from the tops of which hang down rich yellow bunches of betel-nuts—a picture altogether different presents itself.

"The slopes are clothed with a vast extent of dry jungle, of grass, brushwood, young trees and bamboos, all young, but of different ages. Old forest with large trees is only found on the crests of the ridges and lower down on steep rocky ground, where no toungyás are cut, and no crops can be grown. Outside these groups and belts of old growth, the forest over extensive areas consists of nothing but dense masses of bamboos, and where these prevail, toungyás may be cut and a good crop reaped once in seven years. In other places there is no bamboo, but only shrubs and tall grasses. This kind of growth is most commonly found where land is scarce, and the rotation is consequently short—from three to five years only. In such places a number of old, stunted and gnarled trees are left standing on the ground, which are pollarded whenever a toungyá is cut. The branches and leaves are spread over the ground and burnt. In such places the people are most thankful if an abundant crop of tall reed (*Arundo* sp.) grows up, as the stalks of this grass

yield a good supply of ashes. * * * * * The whole of this forest is most carefully protected from fire. In these hills, if any one sets fire to the forest through carelessness or mischief, the villages claim and enforce the payment of heavy damages. If this were not done, the forest would not grow up thick enough to furnish sufficient ashes for the crop.

"Another feature is, that the whole of the toungyá grounds of one village are divided into a large number of plots, each plot being owned by one of the proprietors of the village. Well-to-do people own from twenty to thirty plots situated in different parts of the village area. The boundaries of these plots are marked by trees, by stones, and sometimes by shallow furrows drawn along the slope. These plots are sold and bought, just as the plots of the betel-palm gardens; and when a proprietor dies, his toungyá grounds, like his gardens, are divided in equal shares among his children. I have here spoken of the people as the proprietors of their toungyá grounds. They claim, however, only a kind of imperfect proprietary right. They hold these plots as against each other, but they recognise that the State has a superior right in the land.

"In the dry season, when the time for cutting the toungyás approaches, the headman of the village, after consulting the chief proprietors, determines the areas on which the forest is sufficiently advanced and on which the toungyás of the year are to be cut. The area selected for the toungyás of the year is not all in one block, but a village generally cuts four or five blocks a year, each block belonging to a number of proprietors. It may thus happen that a proprietor owns no plot of toungyá land in the blocks selected during any one year for cutting and burning. If so, he makes an arrangement with other proprietors, and rents some of their plots for the year, the rent being generally paid in kind. There are also persons who, in consequence of the increase in the population, have become poor and own only a small number of plots. Many of them, if they cannot earn the means of subsistence in their own village, emigrate and settle in the plains, where they take to the cultivation of permanent fields.

"All persons who have shares in the block selected for the year join in cutting and burning, and the greatest care is taken to prevent the fire spreading into the adjoining forest. The only crop which is grown is rice. Cotton, which is an important crop on the hills of the Pegu Yoma, yields a poor return here, and is not much cultivated. The sites of villages in these hills are not absolutely permanent; they are shifted now and then, but never to any great distance. The larger villages, which have extensive areas, often consist of several separate hamlets.

"A similar state of things to that here described is found in other parts of the hills which separate the valleys of the Sittang and Salween rivers, where the population is dense and the area available for toungyá cultivation is limited. But throughout these hills all possible gradations may be observed between the system now described and the migratory system which prevails on the Pegu Yoma and in other parts of Burma."

SECTION III.—THE LAND REVENUE SETTLEMENT.

§ 1.—*Revenue History.*

The revenue history of Burma is brief and simple. Under the Native rule, as under ours, there are two kinds of cultivation to be dealt with; the permanent cultivation which is practically all rice, diversified here and there with orchards, palm groves, and gardens; and the shifting cultivation or toungyá. The latter is necessarily excluded from anything like a settlement. The area of it is always altering, and cannot therefore be the subject of any field survey or record. A tax is usually imposed on the family cutting the yá, or on the number of "dahs" or knives used in clearing (which means that a fee is payable by every member of the family able to wield the dah). At the present day toungyá cultivation is similarly dealt with. Every male person of 18 years of age and upwards in each family which practises this cultivation, has to pay an annual tax, and no attempt is made to assess the land actually under crop in each year[5].

Permanent cultivation in the plains (and elsewhere, where it has been established) need alone engage our attention.

I have already stated that the State was entitled according to ancient Burman law to a share in the produce of land. The Burman Government levied what is called a "rice-land tax," but it was not assessed on the land, but generally upon the number of cattle employed in working it. The revenue obtained was comparatively insignificant. The assessment was made by irresponsible subordinate officers, who, after paying a certain sum into the State treasury, were accustomed to levy such additional contributions as they pleased for their own benefit[6].

The British Government of course set aside this method, and levied a revenue according to rates on land.

As cultivation extended a rough survey was made.

[5] Rules under section 24 of the Act, R. 31.

[6] Directions to Settlement Officers, 1880,—Introduction.

§ 2.—*Early system.*

The circumstances of Burmese land tenure which have already been alluded to, did not give rise to a natural grouping of land like the North Indian mauza, in which the whole of a known area, waste and cultivated, belonged either jointly or in shares to a proprietary body. Nevertheless it was easy to partition out the land into groups called *kwin* (written also *kweng* or *qweng*). The kwin may, in fact, form a compact group of holdings, and have the village site or the residences of the cultivators within it, so that it is not a great misuse of terms to speak of it as a village.

In all cases a recognised kwin is a compact block, and is often bounded by natural marks, such as creeks, streams, &c.

In every kwin a uniform rate per acre[7] was at first fixed for all paddy land, no regard being paid to internal differences of fertility. Gardens and palm groves were dealt with somewhat differently, and a rate per tree might be levied in the case of orchards or groves of palms.

The right of the State was fixed at one-fifth of the gross produce valued in money.

§ 3.—*Liability of land to pay revenue.*

The Act of 1876 declares all land to be liable to pay revenue, which was culturable when the Act came into force[8], or which, being culturable, was rendered unculturable by the subsequent erection of buildings or otherwise by the act of man, or which was actually assessed.

This, however, does not apply to lands granted revenue-free by the *British* Government, nor to lands which pay by toungyá tax, nor land appropriated to the dwelling places of any town or village, *and* exempted by order of the Chief Commissioner, nor to land belonging to the site of a monastery, pagoda, or sacred building or school (so long as it is used for these purposes).

[7] Act II of 1876, section 24.
The British statute acre was adopted, sub-division being into "anas" (2722·5 square feet) and "pies" (226·875 square feet).

[8] *i. e.*, 1st February 1879.

Section 24 of the Land and Revenue Act gives power to the Chief Commissioner to make rules regarding the rates per acre or the rates per tree growing on land, which are the forms in which assessment is recognised by the Act.

§ 4.—*The right to a settlement.*

The Act does not contemplate that in all cases a settlement of the assessments imposed according to sanctioned rates should be made for a number of years. It supposes that the rates may be altered every year or otherwise according to circumstances; and it gives persons in possession of culturable land the option of asking for a settlement. The person having a permanent right of occupancy has a right to such a settlement; any one else can only get it at the option of the Settlement Officer. A settlement being granted, the rates cannot be changed during the currency of the term[9].

A settlement-holder can by giving proper notice give up his settlement[10].

These provisions were more required in the first days of our rule, when plots of cultivated land were often scattered, uncertain, and at wide distances apart, and when it was only in certain places that connected groups of cultivated land with large or permanent villages were to be found; and annual assessment may still be the rule in cases where cultivation is scattered, and where the country is not sufficiently advanced to warrant the introduction of the regular settlement.

§ 5.—*Modern practice of settlement.*

But there is now a regular Settlement Department, and in all districts or parts of districts sufficiently advanced to be placed under settlement, an accurate field-to-field survey is being made, with a record of rights. I shall endeavour to give a brief description of the procedure of a regular settlement.

[9] See sections 25, 26 of the Act.
[10] *Id.*, section 29.

The objects of the settlement are declared in the "Directions" to be—

1. The complete survey of all lands.
2. Registration of all cultivation of land, with proportions of their various interest under the land.
3. An equitable assessment of the land revenue on sound principles and on a uniform system.
4. Punctual registration of all transfers and of all changes in the occupation and use of land.

§ 6.—*Demarcation.*

The first step (as in other forms of settlement) is to demarcate the areas that are to be dealt with.

A special Act (V of 1880) in Burma provides for demarcation.

The chief features of the Act are that a demarcation officer puts up the marks, and a boundary officer decides any question that may arise, with the aid of arbitration, if the parties consent; if not, by his own order, subject to appeal.

The rules made under the Act[1] give a list of the separate properties requiring demarcation; such are—groups of land (of which hereafter) called kwins; waste land grants under the old rules; towns, cantonments, internal lots in stations, orchards, gardens, and so forth.

For some of these the boundary officer is himself the demarcation officer; for others (cantonment, town, suburban, and civil station lots and internal divisions) the cadastral survey officer is the demarcation officer.

§ 7.—*Estates to be demarcated permanently.*

Some of the demarcation is, under the rules, only temporary by aid of wooden posts bearing distinguishing rings of white paint. The object is to indicate boundaries for survey purposes only; but all kwins, waste land grants, and land made over to reserved forest, as well as *all boundary lines about which there has been a*

[1] See Appendix A to 'Directions for Settlement Officers."

dispute, require to be permanently demarcated. In ordinary cases this is done by sinking burnt clay drain pipes, or otherwise, as may be directed. Waste land grants (those under the old rules) are demarcated by masonry pillars.

§ 8.—*The kwin.*

All the properties requiring to be demarcated and specified in Rule I of the Rules under the Boundary Act explain themselves, except the kwin. This refers primarily to the local division or group of cultivated lands, already alluded to, but is also applied to all separate kinds of estate, and the rules speak of each reserved forest being made into a separate "kwin"—of fishery land kwins, waste land grant kwins, and so forth.

A kwin of cultivated land will often be a village, that is, it wil comprise a group of land in one place with a village site on it; recognised local divisions are maintained, but subject to this, the aim is to have the kwin form a group of land of from 1,200 to 1,300 acres in extent, and to make use of conspicuous natural features for kwin boundaries wherever it is possible. Very often strips of uncleared jungle separate kwins, and sometimes a considerable extent of such jungle.

Rules are made for the inspection and preservation of all marks which require to be kept up permanently.

§ 9.—*The Survey.*

When the boundaries are arranged, the survey which is a professional one is carried out. It results not only in maps which show the fields as they exist at the time[3] (the thoogyees of circles

[3] "The country is divided into great blocks or main circuits, the limits of which are generally connected with Great Trigonometrical Survey stations. These main circuits are subdivided into minor circuits formed on the same principle. The country having thus been divided into a series of larger and smaller polygons, the area of each larger polygon, and the areas of its included smaller polygons are independently calculated, and the results proved by the total area of the latter agreeing with that of the former. From the smaller polygons the surveyor next proceeds to plot skeleton plans of the kwins. These plans are handed over to the field surveyors, who, with plane-table and chain-fill in all the anterior details and turn out a plan of the kwin showing every existing boundary, natural and artificial." (Directions, § 11.)

are, as we shall see, bound afterwards to make additions and corrections which show newly-formed fields and new internal divisions caused by transfers, successions, and partition), but also in topographical maps on a scale of two inches to the mile.

§ 10.—*Assessment of revenue.*

The older theory of taking one-fifth of the gross produce is now abandoned. The plan is to select sample areas in the kwins, taking care to take land held on different tenures or culturable by different methods, and to calculate the actual yield at harvest time[3]. For the purpose of establishing these blocks, the entire kwin is not treated as homogeneous, as it was under the earlier system, but is first classified into a few well-marked blocks (avoiding minute classifications). A sample field is taken in each block. This will not of course always be necessary; the whole kwin may be practically uniform, or it may be "that a cluster of kwins are so closely allied in natural character and agricultural conditions as to render a kwin-to-kwin selection unnecessary."

The object is to obtain results representative not only of the kind of land, but also of the land under varying conditions of agriculture, and so to get an average which will be fair for the whole area.

This will give the necessary information as to the *amount* of produce. But the *value* of produce has also to be considered.

A previous inspection and classification are therefore to be undertaken. The Settlement Officer will first have to group the kwins according to *tracts similarly circumstanced*. The chief facts which will guide the selection of assessment tracts are—

(*a*) marked differences in density of population and size of holdings;

(*b*) important differences in kinds of produce raised, due to climate, physical character of the country, and other causes;

(*c*) important differences in facilities for transport to market and disposal of produce.

[3] See section 57 (*b*), Act II of 1876. "Directions," Chapters III and V.

It is obvious that given the average amount of produce in the kwins, the value, and therefore the assessment rate, will vary according to these circumstances.

Then he will proceed to make out his soil blocks, each to have its representative trial area in each kwin if necessary: these soil blocks are marked in the maps with a coloured pencil.

The statistics of outturn are then considered, and the total value of the produce is calculated; the cost of export to the market and the local price, the cost of cultivation and the cost of living are all tabulated by a special staff, and the Government revenue is to be a share of the net profit, *i.e.*, the value realised, after deducting cost of cultivation and cost of living.

§ 11.—*The Government share.*

The share of Government is in theory to be one-half of this net profit[4], but the Settlement Officer has to take into consideration the present revenue, the probability of a rise or fall in prices, the fact that there is or is not much waste in the kwin which may be brought under cultivation, and that population will or will not increase, before he determines the rates he proposes actually to levy. So that the full half will not always be taken. It is of no use to propose rates which would compel the people to lower their standard of living. Large families cultivating small holdings again cannot usually pay as much as small families cultivating large holdings; and holdings containing no waste, and therefore incapable of expansion, cannot so easily bear a heavy burden as those on which there is room to extend cultivation.

§ 12.—*Period for which the rates hold good.*

A proportion (usually from 2 to 5 per cent.) of fallow land is always allowed for[5]. Paddy land is assessed at a rate per acre,

[4] "Directions" § 149.

[5] *i.e.*, fallow land is assessed along with other land, which prevents the abuses resulting from the earlier system of reporting actual (supposed) fallow, and allowing it to be revenue-free for the year. A general deduction at the rate of 2 to 5 per cent. of the area is then allowed in the assessment. (Directions, para. 142.)

which rate will ordinarily remain unchanged for not less than ten or more than fifteen years. In all other lands, a lump sum is fixed for the entire holding, for the same period as for the rice land.

Orchards, gardens, and miscellaneous crops are usually assessed at the highest rate fixed for rice land, or may be assessed at so much per tree.

The rates and lump sum assessments deduced from these have to be, as in all systems of settlement, reported in detail, explained and justified by aid of tabulated statistics and sanctioned by the Local Government.

§ 13.—*Cesses.*

Besides the rates assessed on the land, an extra cess of 10 per cent. on the assessment has to be paid (this is like the cesses and local rates of Indian settlements.) The object of this is to form a fund to provide for district roads, the district postal service, village police, sanitation, and education. This was formerly levied (to the extent of 5 per cent.) under the Land Revenue Act, but sections 31 and 32 have now been repealed, and the terms "5 per cent. cess" and "cess" have been struck out of the Act wherever they occur; and a special Act (II of 1880) now provides for the levy of the cess and for its application. Again, besides the land revenue and 10 per cent. cess, a "capitation tax" is paid by all males between the ages of 18 and 60 years. The rates are fixed by the Chief Commissioner within certain limits laid down by law. There are also certain towns specified in the Act, and certain others allowed by the Chief Commissioner, which, within defined limits, pay no capitation tax, but a rate on land within their limits instead[6].

§ 14.—*Record of rights in land.*

The Settlement Officer has also with the aid of his special staff to make out a record of all rights.

The maps gave him the area cultivated as divided into fields, each field being separately numbered, and the area unoccupied;

[6] Act II of 1880, sections 3 and 4.

the map also shows the grouping of land according to occupation, whether it is a waste land grant, an occupied village, a road, a village site, a monastery site, and so forth. The Settlement Officer has to record the area of land held by each cultivator and the tenure by which it is held. The two main classes of land tenures are the "landholder's," already described, and the "grantee's" tenures. There may also be an occupation under a terminable lease, or under a temporary permission to cultivate; but these are non-proprietary. The leases here spoken of are leases by the State.

Five registers are kept up. No. I shows rights in and occupation of lands; No. II gives the abstract of unoccupied and excluded lands; No. III details grants, No. IV leases, and No. V shows cases where landholders, &c., have given out their holdings, or part of them, to tenants.

"Holdings" are groups of land in a kwin, asssesed to one sum of money, and may consist of several fields.

"Grants" are always each a separate kwin.

The "grant" register does not show old grants which are separate kwins, but grants made under the Act II of 1876.

The register of tenants is not a legal record of rights, but it is kept up for official and statistical purposes.

§ 15.—*Tenants.*

There has been no occasion yet for any law about tenant-right, but the progress of agriculture and the material wealth of the country naturally lead to the wealthier men abandoning cultivation themselves and giving over their land to tenants who cultivate for them, paying a rent which usually consists partly of a cash payment, *viz.*, the amount of the Government revenue, and the rest in kind,—a share of the produce.

The system in Burma not having created any artificial landlord over a whole group, but dealing with the individual holdings and their occupiers, there has been no room for sub-tenures possessing natural rights in the soil in subordination to the general right of a landlord. Any tenancies that arise are therefore necessarily

matters of agreement between a landholder and State lessee or grantee, who agrees with a tenant to cultivate for him on certain terms.

§ 16.—*No joint responsibility.*

In Burma there is no such thing as a joint responsibility of a kwin for the entire revenue assessed on it. This was, as I before stated, attempted in some places, but was found a failure and was abandoned; every man is responsible for his own holding. A holding is often held jointly by the sharers of an original deceased owner. As long as it remains joint, one person is put down by arrangement in the thoogyee's books as responsible for the revenue of the holding. When partition takes place, the shares are separate, and the assessment is apportioned also, so that each share becomes a separate and independent holding.

If, however, several persons have been jointly in occupation of land liable to land revenue cess, or tax in lieu of capitation, during the year, they are jointly and severally liable, and so are all tenants, mortgagees, or conditional vendees. There is also a joint and several liability on all males of the family who at any time in the year (being then 18 years of age) took part in the cultivation, in cases where a tax is levied (as it may be in some cases of toungyâ) on the family[7].

§ 17.—*Record of customs.*

During the preparation of the record of rights, opportunity is taken to draw up a note of *village customs*, in regard to succession and transfer, in regard to managing joint holdings, partition of holdings, boundaries, who owns the strip between holdings, who has the right to break up waste in the holding, in regard to rights of way, cattle-paths, rights to jungle produce, fruit trees, who is to be headman (Ywa-loo-gyee) in the village, and how succession to the office is regulated, how pagodas, zayats or rest-houses, and other public buildings are repaired and maintained, &c., &c.

[7] Revenue Act, sections 37, 38.

A note should also be added giving the history of the kwin, especially noticing various revisions of revenue rates, chief varieties of produce, customary mode of selling produce, and current local price of chief products.

SECTION IV.—REVENUE OFFICIALS AND REVENUE BUSINESS.

§ 1.—*Revenue-officers.*

The Revenue-officers are by notification[8] constituted in six grades: in the first are Commissioners and the Secretary to the Chief Commissioner and the Settlement Secretary; in the second are Deputy Commissioners and Town Magistrates; in the third Settlement Assistants; in the fourth the Superintendent of Cadastral Survey and Assistant Commissioners (not in settlement); in the fifth the Extra Assistant Commissioners; and in the lowest the thoogyees of "circles," who are in fact very like the tahsíldárs of North India.

§ 2.—*Commissioners.*

The district organisation is in some respects like any Indian Non-Regulation Province. First there are the Commissioners of Divisions, which here are very large; *e.g.*, one Commissioner presides over the whole country to the east of the Pegu Yoma, and from the frontier beyond the Tounghoo down to the furthest point of Tenasserim.

§ 3.—*Deputy Commissioners.*

Under the Commissioners are the districts, each in charge of Deputy Commissioners, under whom there may be divisions of districts in charge of an Assistant. Every district is divided into "townships," and each township is presided over by an Extra Assistant Commissioner, called Myo-oke, Sit Keh, or Woondouk, according to his rank. The Extra Assistant Commissioner has civil, criminal, and revenue powers.

[8] Revenue Act, section 35, and Schedule A. Notification No. 11 of 1st February 1879, § IV, &c.

§ 4.—*The Thoogyee.*

Every township again is made up of "circles," each presided over by a thoogyee as its local revenue official. The duties of thoogyees in preparing assessment rolls for their circle, looking after the collections, and so forth, will be found in Rules 62—71. The thoogyee may have an Assistant called—Myay-daing thoogyee.

§ 5.—*Village headmen.*

There are headmen of villages called kyaydangyees[9], but they were chiefly the spokesmen of the villages as regards their dealings with the authorities. The kyaydangyee has no revenue functions, nor has he any responsibility like the lambardárs of a North Indian village, nor consequently does he get any percentage or remuneration. But, as a matter of practice, he does give the thoogyee of his circle considerable help in collecting the revenue of the kwin. These are not even mentioned in the Revenue Rules.

The kyaydangyee is, however, an important functionary from a police point of view. He forms part of the rural police[10], and his duties are to report crime and the arrival of persons of suspicious character to the "goung" or headman over a 'circuit.' He has also to help public officers when in camp and to keep up certain registers of births, deaths, and marriages, and to help when required in collecting and registering vital statistics. The headman is liable to certain penalties for neglect or misfeasance, but a prosecution cannot be instituted against him without the orders of the Deputy Commissioner. There are also certain rules regarding the limit of time and giving notice in case a civil suit is filed against a headman regarding his official acts, for which the Act (II of 1880) must be consulted.

§ 6.—*Revenue duties.*

One of the first objects is of course to keep up the settlement survey maps up to date. Forest land is broken up, boundaries of

[9] These are the official headmen; the 'local' headman is the "Ywa-loo-gyee."
[10] Act II of 1880, sections 12—14.

holdings alter by transfers, partitions, and so forth, and if the maps did not show these changes, they would in a few years become so incorrect that the whole survey might have to be done over again.

As regards changes affecting the maps, a 'supplementary survey' is made every year to record them.

Besides this, seven registers are kept up. The first and most important shows the state of the *holding* at the beginning, what happened during the year, and how it stood at the end of the year. This return also contains tables of local value of produce at various periods throughout the year.

The second register shows grants made during the year; the third shows the leases: as these leases only consist of lands temporarily relinquished by landholders, and may revert to them within twelve years, it is necessary to keep them separate from grants.

The fourth register (tenants) is important, because otherwise a tenant right would become confused with a landholder's. The thoogyee generally collects the revenue from the tenant direct, and therefore puts him on this list as if he were the landholder; in this way confusion might arise. It is to be remembered that the landholder is still in 'possession' under the Act, although his land is actually worked by a tenant.

The fifth and sixth registers, showing transfers and partitions, need no remark. The seventh is a revenue-roll; it shows the areas field by field, added to or taken from each holding during the year, the classes of soil (according to the settlement classification) to which the increments or deficits belong, the rates to be applied, and the resulting increase or decrease of the total assessment.

The thoogyee or his assistant (whose appointment is so regulated that he may be a competent surveyor) carries out the supplementary survey and enters the necessary changes on copies of the settlement maps, and also keeps up the first four of the registers. A "Superintendent," appointed under the orders of the Deputy Commissioner, checks the work[1] with the aid of some member of his staff called an Inspector.

[1] See Chapter V, Directions to Revenue Officers.

The Superintendent himself prepares the seventh register or rent-roll, which must be signed by him and also by the Deputy Commissioner, and the thoogyee is furnished with what the "Directions" call "tax tickets," or counterparts of the roll for each holding, on the strength of which he makes the revenue collection.

§ 7.—*The Agricultural year.*

The agricultural year in Burma begins on the 1st July, but the date may be changed[2]. Any increase in rates, &c., only takes effect from the 1st July following the date on which it may be ordered.

§ 8.—*Recovery of arrears of revenue.*

As forest officers are often interested in the recovery of arrears of forest revenue which may be recovered just in the same way as arrears of land revenue, it will be desirable to explain how such sums are recovered.

A person is in arrears and becomes a defaulter under the Act, when a written notice of demand having been served on him (or published under the rules if he cannot be found), the demand has remained uncomplied with for ten days.

The ordinary process for recovery of arrears of revenue is that of the Civil Procedure Code for the execution of decrees, in which the Revenue-officer is the "decree-holder" and the defaulter is the judgment-debtor[3]. If the amount does not exceed Rs. 1,000, there may be an order for immediate execution[4], which will greatly facilitate collection of all petty sums of revenue; and section 45 of the Revenue Act itself allows a special procedure in the case of a defaulter who has absconded or is about to abscond. The Chief Commissioner may empower any Revenue-officer to proceed against the land itself, either instead of, or in addition to, the proceedings in executing the money recovery. If there is a permanent heritable

[2] Revenue Rule 47 (under section 41 of the Act).
[3] Revenue Act, section 45.
[4] Civil Procedure Code, section 256.

and transferable right in the land it may be sold, and the purchaser takes the land free of encumbrances. If there is no saleable right in the land, the Revenue-officer may take possession of the land, which then vests in Government free of all rights.

§ 9.—*Procedure in revenue cases.*

As regards revenue procedure, in cases other than those for the recovery of arrears, the Act[5] gives powers similar to those found in other revenue laws, to cause the erection, maintenance, and repair of boundary marks.

Provision is made for advances to agriculturists, like the "taqávi" in India, and for remissions of revenue[6] on account of calamity or famine which was beyond human control. Detailed instructions on the subject are found in Sections VII and VIII of the Revenue Rules.

All orders passed by revenue authorities below the Commissioner are appealable; the Act leaves it to the "Rules" to decide details, but mentions a number of important revenue subjects on which final orders are not to be passed by an officer of lower grade than a Commissioner[7]. The rules, regarding appeals and procedure generally, will be found in the Revenue Rules 60—85. The service of notices under the Act is effected in the way described in Rules 55—59.

[5] Section 54. See also Act V of 1880, sections 22—27, regarding the cost of boundary marks, their repair and maintenance. As regards inspection of permanent marks twice a year, see rule 9 appended to the Directions to Settlement Officers.

[6] Section 58.

[7] Section 55.

CHAPTER II.

THE REVENUE SYSTEM OF ASSAM.

CONSTITUTION AND HISTORY OF THE PROVINCE.

§ 1.—*The Chief Commissionership.*

THE Province of Assam was constituted a Chief Commissionership in 1874[1]. The Sylhet district was by a separate notification in the same year added to it[2]. The whole forms a scheduled district under Act XIV of 1874, and the Statute 33 Vic., Cap. 3 applies.

As the effect of constituting the province a local administration would be to hand over to the Chief Commissioner all the powers of the Local Government (consequent on the definition in the General Clauses Act (I of 1868), an Act (VIII of 1874) was passed to prevent this result and to vest in the Governor General as Local Government all the various powers that had been given by law to the Lieutenant-Governor of Bengal, or to the Board of Revenue, as regards Assam. The Act provides that all such powers shall be taken to be transferred to and vested in the Governor General in Council; and then the Governor General is empowered to delegate to the Chief Commissioner all or any of the powers so vested, and he may withdraw the same.

A similar Act (XII of 1874) was passed for Sylhet, which was on a different footing from the rest of Assam, having been a portion of Bengal Proper[3].

[1] See Book I, Chapter I, page .

[2] Sylhet or Silhat is properly "Srihatta." See Notifications Nos. 1149, 2343, &c. (*Gazette of India*), dated 12th September 1874. This district is brought under the 33 Vic., Cap. 3, taken under the direct management of the Government of India, placed under the Chief Commissioner, to whom also certain powers lately exercised by the Lieutenant-Governor of Bengal and the Board of Revenue are delegated.

[3] And the Governor General has delegated certain powers by Notification No 522, dated 16th April 1874 (*Gazette of India*, 18th April 1874, page 182).

Assam consists of (1) Goálpára, including the Eastern Dwárs annexed after the Bhutan war in 1866; (2) the districts of Assam Proper, lying in the Bráhmáputra valley, namely, Lower Assam (Kámrúp, Darrang, and Naugong) and Upper Assam (Sibságar and Lakhimpur); (3) the hill districts,—the Garo hills, the Khási and Jaintiya hills, the Nágá hills district, and the north part of Cachar (which, however, does not form territorially a district separate from the rest of Cachár); (4) the districts of Sylhet and Cachar.

§ 2.—*The Regulation regarding 'Inner line.'*

All these districts (except Sylhet) come under Regulation V of 1873, which enables a line to be drawn, called the 'inner line,' in order to separate off the wilder and less civilised portion of any district (where such a proceeding is needed). British subjects, or any class of them, may be prohibited from going beyond the line without a pass[4]. British subjects, or any person not being a native of the districts, may not, without special sanction, hold land beyond the line. I shall notice in the sequel the cases in which the provision about the inner line has been applied. It was not needed in the Garo hills, for example, but it is enforced in other places.

§ 3.—*The Frontier Regulation.*

Besides this, Regulation II of 1880 enables the Chief Commissioner to declare certain frontier tracts of Assam inhabited by barbarous tribes exempt from the operations of any enactment otherwise in force[5].

§ 4.—*Distribution of territory.*

Geographically, the territories of Assam form three belts. The most northern is Assam Proper, with Goálpára; the middle is the

[4] The temptation to do so is to get India-rubber, ivory, and jungle produce. The Regulation legalises the confiscation of such produce found in possession of any one convicted of transgressing the rule.

[5] I have not yet seen any notification under this Regulation. See page 749.

network of hills occupied by the Garo, Khási and Jaintiya, and Nágá hills; the southern consists of Sylhet and Cachár, the northern corner of which latter district goes up into the hills forming the middle belt.

As these territories were acquired under different circumstances and have some legal and other peculiarities in their administrative constitution, I shall divide this chapter into five sections :—

Section I.—Goálpára.
Section II.—The Assam Valley.
Section III.—The Hill Districts.
Section IV.—Sylhet.
Section V.—Cachar.

Section I.—Goálpára.

§ 1.—*The old district.*

Under the first constitution of Bengal, as it was when acquired by the British Government in 1765, a large collectorate called Rangpur contained in its north-eastern corner a net work of hills occupied by Garo mountaineers, who lived by "júming" the hill sides, and who could not conveniently be brought under the ordinary laws of Bengal. To the north of these hills, also, a certain portion of the plains on either side of the Bráhmáputra river, comprising the thánas of Dhubri, Goálpára, and Karaibári, were also wild and jungle-covered country, so that at first they were but little known to the British officers, and were practically not administered at all.

The tracts at the north foot of the hills came under the decennial settlement. There were twelve estates of chieftains who had held the wild country under the Mughal Government on payment of a tribute : these became the zamíndárs, and their estates were assessed without any enquiry about the amount of the tribute; six other estates were found to be invalid, but were afterwards admitted to a settlement at fixed rates[6].

[6] Statistical Account of Assam, Vol. II, page 64.

These estates (beyond the Garo hills, and lying on both sides of the river), together with the Eastern Dwárs (which are again to the north of the permanently settled estates), make up the whole of the Goálpára district. The settlement arrangements in these two parts are different. As regards the old estates, it is stated positively in the "Statistical Account" that the estates I have been speaking of are permanently settled. They came under the decennial settlement no doubt, and the proclamation in 1793 made all the settlements permanent. But in 1822 Regulation X was passed, which removed all this corner of old Rangpur—namely, the three thánas (settled as just stated) and also the Garo hills—from the effect of the Regulations; so that it is not altogether clear whether the Regulations which made the settlement permanent did not cease to apply to these estates. It is understood, however, that the Government of India has conceded the point, and that the estates may be regarded as permanently settled.

§ 2.—*Garo hills separated from Goálpára.*

In 1869 an Act (XXII) was passed which repealed Regulation X of 1822, and made the Garo hills into a separate district, which was to be exempted from the ordinary law. The boundary between Goálpára and the Garo hills was laid down and declared on the 14th August 1875; but afterwards doubts arose as to whether the boundary so laid down was in accordance with Act XXII of 1869, and accordingly a Regulation (I of 1878) has been passed declaring the boundary notified on 14th August 1875 to be correct, and to be the legal boundary.

The repeal of Regulation X of 1822 in 1869 would appear to have restored the force of the ordinary law as regards the three thánas of Goálpára, until 1874, when the Local Laws Extent Act and the Scheduled Districts Act were applied. But this is very doubtful, and practically the Regulations were not enforced before 1874[7]. As the matter stands at present, none of the permanent settlement

[7] Mr. Ward's Note on Laws in force, § 23.

Regulations are in force. The Sale Law (Act XI of 1859) is in force with its subsequent amending Acts. But sales rarely or never occur, as the assessment of the estates is absurdly low.

It is questionable whether Act X of 1859 (the Rent Act) is in force, though it has practically been acted on, at least to some extent[8].

§ 3.—*The Dwárs.*

The Eastern Dwárs, which form a part of the Goálpára district, were annexed from Bhutan in 1866. In 1869, by Act XVI, which is still in force, these Dwárs were removed from the jurisdiction of the ordinary Civil Courts as regards immovable property, rent and revenue questions. They are governed by the rules which form the schedule to Act XVI. The rules direct Regulation VII of 1822 to be followed, and a record of rights is to be prepared under the orders of the Lieutenant-Governor. The rights and interests of each person connected with the soil are those which he had before the Bhutan war broke out. In 1870-71 the lands were settled for seven years. Four Dwárs were settled raiyatwárí as in Assam, but certain Rájas, landholders or chiefs were allowed to engage for the revenue.

The fifth (Chirang) is held khás, that is to say, the cultivators are raiyats holding direct from Government. The position of the raiyat is very much the same as in Assam; it is secured by "patta," and when the lease is given to a middleman, clauses are inserted requiring the rents for the raiyats to be maintained at the fixed rates; the farmers may, however, arrange for the extension of cultivation during the currency of the settlement, and get the whole benefit of this[9].

[8] The Advocate General in 1867 thought Act X of 1859 did not extend to the districts of Assam (and he would probably include Goálpára, which in 1859 was under the "Non-Regulation" system). The notification of laws in force does not allude to Act X, so that the question appears still to be doubtful.

[9] See Administration Report, 1874-75.

§ 4.—*Land Tenures.*

There is little that calls for notice in the land tenures of the district.

The settler who clears the jungle is called "jotdár[10]". In the old Rangpur thánas there are zamíndárs, and the jotdárs have become their tenants. The jotdárs often do not cultivate themselves, but employ sub-tenants, who give them half the produce on the adhyári system. The zamíndárs of Goálpára often give ijára leases for parts of their holdings. Ijára leases are simply farms of the rent collection. They also grant rent-free tenures for religious and other purposes, and some land is held by tenants who pay no rent, only give certain service or labour for their land; they are called "sukh-bás" or "khud-bás."

Leases given out to cultivators to reclaim waste, with a remission of rent for the first year, are called "páil-patta."

SECTION II.—THE DISTRICTS OF ASSAM PROPER.

§ 1.—*Constitution of the districts.*

The districts of the Assam Valley were acquired in 1826. In 1835 Lower Assam (Kámrúp, Darrang, and Naugong) was placed (by Act II of 1835) under the superintendence of the Sadr Court of Bengal as regards judicial matters, and under the Board as regards revenue matters. Upper Assam was attached to Bengal in 1839 (previously it was under the management of a Rája), and two frontier tracts—Matak and Sadiya—were added in 1842. These districts (except Lakhimpur) were managed like the Lower Assam districts, and the same was ordered for Lakhimpur in 1860. The Assam Code of 1837 was issued for guidance of officers, but it makes no provision for revenue matters. These

[10] But the name is not used in the Dwárs, except in the Guma Dwár, and there it is dying out. Under the Goálpára zamíndárs, the estate is divided into parganas, then into tahsils or collecting circles, and then again into jots, a group of raiyati holdings under the "jotdár."

districts are in revenue matters guided by the Settlement Rules of 1870, which have not the force of law, only of long custom[1]. The rest of the revenue procedure and law practice has hitherto been very much on the same footing. The ordinary Settlement Regulation (VII of 1822) has been so far followed that the provisions of it are acted on in practice when convenient and required to supplement the Rules of 1870.

The recovery of revenue in the same way is managed under the practice long in force which will be described afterwards, and the provisions of Act XI of 1859 and Bengal Act VII of 1868 appear to be so far in force at least that their general spirit is followed. They have not been declared by the notification under Act XIV to be specifically in force. The Rent Law (Act X of 1859) is administered to some extent, but the Advocate General in 1867 held that it was not legally in force[2].

§ 2.—*The land tenures of Assam.*

The above brief outline is intended to show the present position of Assam as regards the law under which land-revenue

[1] For this reason a Land and Revenue Regulation is under consideration. It is very doubtful whether Bengal Regulation VII of 1822 extends to Assam, and in the notification under the Scheduled Districts Act it is not mentioned, hence I gather that it is not legally in force, and that it is not desired to extend it specifically, as the new Regulation will do all that is wanted (see Ward's Memo., § 66, &c.).

[2] On the whole it would appear that Assam having been from the first placed under special officers guided by special rules in 1835, it was never formally annexed to the Bengal Presidency within the meaning of the statute of 1800 (see Book I Chapter I, page 13), consequently the Regulations did not apply. But though this is not said in so many words in the Act of 1835, still instructions were given under that Act in the form of the Code of 1837, approved by Government, and this introduced "the general spirit of the Regulations." It would seem, however, that afterwards, when general Acts were passed, they would *proprio vigore* apply to Assam in the absence of express words to the contrary; nevertheless this has been doubted in regard to Act X of 1859. The Limitation Law at that time (XIV of 1859), though quite general in its terms, was specially extended to Assam, and there is therefore very great doubt how far some of the existing laws are in force. It is probable that the omission of all mention of Revenue and Rent Regulations and Acts in the notification under the Scheduled Districts Act was intentional, pending the introduction of a special Land and Revenue Regulation under 33 Vic., Cap. 3.

settlement can be made, rights recorded, and rent and revenue be recovered.

Before describing briefly the revenue system of Assam and how a settlement is made, it will be well to take a brief survey of the customs of landholding in the Assam Valley.

When the old Aham Ráj was established, we find the State constituted by a Rája, and under him a whole hierarchy of officials,—a commander of the forces, a commander of the boats, a purveyor to the royal household, and a number of "barás" or chiefs, each with an establishment of "paiks" and "káris," the former for military duty, the latter for all kinds of service. Every male was liable to serve as a paik. The chiefs were allowed to hold certain lands for the support of their retainers; the estates consisted of so many "gots," each got being sufficient for the support of four men. Revenue was taken from the inhabitants generally in the form of a poll-tax, and there was the liability to service before mentioned; the poll-tax was afterwards exchanged for a payment on land which was collected by various agents—"chaudhri," "mauzadár," and "kagotí." All the landholdings were separate and individually responsible, and the tenure was based on the clearing of the jungle; it was virtually held at the pleasure of the Rája, and no Assam paik had in those days a heritable or transferable right in the land[3], although, no doubt, in practice land did descend from father to son. There were a number of royal grants of land held revenue-free for the support of Brahmans, temples, and the worship of special divinities.

This historical condition of things has resulted in the existence at the present day of the following classes :—

(1) Lákhiráj or revenue-free holdings.

(2) What are now called "nisf-khiráj" holdings, which are in fact invalid revenue-free holdings, to which certain rights were conceded as a matter of favour or equity.

[3] Mr. Ward's Note on the Revenue System, § 40.

(3) Proprietary grants or leases under waste land rules for tea, coffee, or timber cultivation.
(4) The ordinary raiyati holdings of Assam.
(5) Certain special tenures.

(1) *Revenue-free holdings.*

These tenures were enquired into by a Commission under Bengal Regulation III of 1828 and have been confirmed; they now number 137, covering 82,295 acres. The holders are proprietors of the land.

(2) "*Nisf-khiráj.*"

These used also to be called "lákhiráj," but in 1871 the Commissioner invented the term "nisf-khiráj,"—lands paying half revenue, to distinguish them from the first class. There are 2,327 such estates covering 219,811 acres, and assessed with Rs. 1,00,928 revenue. They are held by persons whose ancestors had failed to prove their lákhiráj title; the lands were consequently resumed by Government, but were settled at light rates under orders issued in 1834, and possession of the land was secured to the nisf-khirájdárs on the condition of their accepting the assessment. They have continued to hold ever since at half the prevailing ordinary raiyati rates; but the assessment will rise if these ordinary rates are raised, and the nisf-khirájdár must accept this or give up the land. In 1876 the Government of India ordered that a settlement should be made for ten years. The settlement was to include all land, waste or cultivated, included in the original decree, and if the boundaries were not clearly stated (and they rarely were), the question of possession was to be gone into. If the land in possession was only in excess of the decree to the extent of 10 per cent. no notice was to be taken, but a larger excess would be assessed at full rates. It being settled what land was included in the holding, the cultivated land was to be assessed at half rates, not the waste, which was to be held

revenue-free during the currency of the settlement. No remission or decrease of revenue during the term would be allowed[4].

Till the measurements and settlements for ten years are ready, annual settlements as usual are made.

There are some special grants of this kind to the Rájas of Darrang, for which special terms have been ordered[5].

(3) *Waste land grants.*

These grants are not for ordinary cultivation, but for tea or coffee.

The first rules were issued in 1838, but only sixteen estates, covering an area of 5,494 acres and lying in the Sibságar district, exist under these rules. The next rules were issued in 1854; one-fourth the grant is revenue-free in perpetuity, the rest is revenue-free for fifteen years, and then at rates progressing from 3 anas to 6 anas per acre. In 1861 estates were offered at an upset price (usually Rs. 2-8 an acre, but sometimes higher), and these grants were in fee-simple. Under these rules also the revenue due on grants of 1854 might be redeemed, sò as to become fee-simple grants. This power of redemption as regards 1854 grants still exists.

From 1876 the fee-simple sales ceased; and now thirty years' leases are granted. The lease is put up to sale at an upset price of Re. 1, and is subject to payment of progressive rates of revenue. After the expiry of the thirty years the land is to remain in the purchaser's hands, subject to the ordinary assessment, which is not to be higher than the highest rate paid on ordinary agricultural produce. The land is then held under a permanent heritable and transferable right of use and occupancy, subject to certain conditions.

[4] On the expiry of the settlement for ten years, a longer settlement has been ordered, based under the cultivated area then found, and all land then waste will be assessed at one-eighth the ordinary rates for rúpit (or rice) land.

[5] Chief Commissioner to Deputy Commissioner of Darrang, No. 107T., dated 20th December 1878.

The following table of grants up to the end of 1878-79 is taken from Mr. Ward's Note on the Revenue System of Assam:—

Districts.	Under rules of 1854 unredeemed.		Under fee-simple rules of 1861, including redeemed grants under 1854 rules.		Under rules of 1876.	
	No.	Area in acres.	No.	Area in acres.	No.	Area in acres.
Kámrúp	4	1,011	40	16,794	20	4,438
Naugong	5	1,896	53	20,536	103	47,263
Darrang	1	293	109	52,234	69	20,644
Sibságar	16	10,613	157	120,743	72	25,276
Lakhimpur	4	2,035	95	78,760	66	27,606
Total	30	15,847	454	289,067	330	125,233

(4) *The raiyatí holdings.*

In its origin this tenure of land is very simple: there is nothing but a right depending on occupation and clearing of the soil.

The settlement rules of 1870 profess to recognise a heritable and transferable right of occupancy in land (subject to registration of all transfers and successions) *if a ten-year settlement for the land is accepted,* but otherwise there is only an annual settlement with the "occupant raiyat," who would therefore presumably be a Government tenant from year to year. Nevertheless the great majority of landholdings are on yearly settlements only, and practically their right is permanent, and its being transferable is at least tacitly admitted[6].

It is now held[7] that the Assam "annual" raiyat has no right in the land apart from the settlement rules; that he cannot claim any right as an annual tenant unless he has got a patta from the Deputy Commissioner, which shows that he has been admitted as a tenant. The annual 'patta' which the raiyat ordinarily receives explains that if the land is required for public purposes Government

[6] Statistical Account of Assam, Vol. I, page 49, quoting the Administration Report for 1875-76.

[7] Mr. Ward gives this as the result of the decisions in the Judicial Commissioner's Court, and these have not been dissented from by the High Court, and in some cases have been confirmed.

has the right of resumption, on payment of compensation for houses, trees, crops, &c., on the land.

A raiyat may relinquish his holding on giving proper notice under the rules, and this right is conceded even to lease-holders.

Waste land taken up for cultivation does not come under the same rules as the grant of lands for tea cultivation.

Any one may apply for 10 bíghás or less to a local official called the mauzadár (whose functions will be described presently); for a larger allotment application is made to a Deputy Commissioner or sub-divisional officer. No one is allowed to take up waste without first applying for it (but this rule is relaxed in some instances). Every applicant for land, who is successful, gets a "patta" for the area.

A lease or settlement may be offered for ten years under the rules, and then the right of occupancy, heritable and transferable, is formally recognised. Tea-planters occasionally avail themselves of this rule instead of taking a grant under the waste land rules.

It would appear that 3,702 such leases have been issued, of which 2,645 are in Darrang and 1,024 in Naugong. The area occupied is 21,262 acres, and the revenue is Rs. 41,471. Out of this some 4,700 acres are taken for tea cultivation. A few four-year leases have been issued in Kámrúp.

The leases for terms are thus seen to be exceptional; the annual leases are in vast majority, numbering (as stated by Mr. Ward) 418,035, covering an area of 1,250,418 acres and paying more than twenty-two and a half-lakhs of revenue.

(5) *Certain special tenures: Chamúás.*

In Kámrúp a few of the raiyats holding large allotments have a certain privileged, or rather dignified, position as "chamúádárs." Such a tenant is allowed to pay direct to the treasury; and his own measurement papers are relied on for the extent of cultivation in his chamúá. The block must be compact, and pay revenue not less than Rs. 100 if the chamúá da before 1859, and Rs. 200 if of later creation.

The chamúá does not get a patta, but an 'amalnáma' or order for him to pay direct into the treasury. On the lands of the chamúá, tenants are regarded as the chamúádár's tenants.

A very few special holdings are to be found in different districts, which do not exhibit any very great difference from the ordinary holdings, except that the holder of the 'khat' or estate is a sort of middleman between the cultivating raiyats and the estate. Thus in Naugong there are khatdárs who are assessed at full rates, but allowed 50 per cent. back again as "commission." So the "khiráj khats" in Lakhimpur; these people seem only to be privileged to collect the revenue (in lieu of the ordinary mauzadár) of a certain 'khat,' keeping 10 per cent. for himself; but he is not owner of the soil in any way.

§ 3.—*Sub-tenants.*

As in the majority of cases the 'raiyat' is himself the tenant of Government, if he employs or allows some one else to cultivate his lands, that person must be called 'sub-tenant.' But these raiyats mostly cultivate their own holdings; it is only the larger raiyats—the khatdárs and chamúádárs and the more substantial lakhirájdárs—who have tenants to cultivate their land, and these they pay in produce or in services, not in money. There is no tenant-right, since Act X of 1859 was never formally extended. The Board of Revenue gave the Commissioner authority to introduce such sections into practice as might be required, and the section recognising an occupancy right after twelve years' holding was not introduced.

THE LAND REVENUE SETTLEMENT.

§ 1.—*Classification of lands.*

For the purposes of settlement, the land in the Assam districts is classified into (1) "basti" (or "bárí"), homestead land, which is usually under garden or other high cultivation and is manured. This pays the highest rate of assessment, which is (at present)

uniformly one rupee per bíghá[8]; (2) rúpit land is the ordinary flat and flooded rice land[9]; rúpit pays at present 10 anas a bíghá; (3) pharingati[10]; this is a residuary class: all land that is not basti or rúpit comes under it, such as tea land, "char" (or "chapur") or alluvial islands and banks, the cultivation of which is precarious; cultivated lands on high ground, and so forth. Land of this class pays 8 anas a bíghá. None of the previously stated rates apply to land within a radius of five miles from a district or sub-divisional head-quarter station. There the market being better, and produce much more valuable, special rates, under proper sanction, may be imposed.

§ 2.—*The mauza and mauzadárs.*

For purposes of settlement and revenue management, the lands or villages are grouped into small sections called "mauzas"—the term in Assam having a different meaning to what it bears elsewhere; each mauza is managed by a mauzadár.

The revenue of an entire mauza varies from Rs. 5,000 to 1,000.

The mauzadár is personally responsible in the first instance; he is consequently allowed 10 per cent. on the revenue up to a certain limit, and a smaller percentage on larger sums, for his trouble and responsibility[1].

[8] The standard Bengal bíghá of 14,400 square feet has been adopted.

[9] The name is derived from "ropit"—the root being rompna, to root up, transplant; alluding to the method of sowing rice in nurseries and transplanting the seedlings into the fields.

[10] I cannot trace the origin and meaning of this term. Wilson's Glossary gives no account of it.

[1] Mr. Ward gives the following statement of mauzadárs in Assam:—

District.	Area of district in square miles.	Population.	Number of		Average remuneration of mauzadárs per mensem.	Revenue collected in 1878–79.
			Mauzadárs.	Mandals.		
					Rs.	Rs.
Kámrúp . . .	3,631	561,681	74	227	80	801,020
Naugong . . .	3,415	256,390	73	213	40	396,749
Darrang . . .	3,418	236,009	52	170	58	388,310
Sibsagár . . .	2,855	296,589	67	208	58	571,635
Lakhimpur . .	3,728	121,267	73	62	20	179,797

In the villages or groups of cultivating raiyats, there is a headman called "gáonbura" (village elder), and a person called "mandal," who in some respects resembles the patwári of other parts. His duty is to help the mauzadár in revenue collection and in the land measurements and records. He is, according to the rules, to be elected by the mauzadár and by the residents of the pargana group (of about 200 persons), subject to the approval of the Deputy Commissioner. Virtually he is a Government servant on a fixed pay of Rs. 6 a month.

§ 3.—*Annual measurement.*

The lands held by raiyats under annual settlements are measured every year by the mauzadárs with the aid of the mandals from the 1st January of the preceding year to 30th April of the year of assessment[3]. During May the mauzadár prepares his papers. These consist of (1) a *chitta*, showing the measurements, position, description of land, and revenue assessed thereon in each raiyat's holding; (2) a *khatián*, or abstract showing the total amount of each of the three classes of land in the raiyat's possession; (3) a *jamabandi*, or rent-roll showing the area of holding, the rate of rent, and the total rent payable. These are the important papers, and they have to be made out in duplicate and given over to the Deputy Commissioner by the 1st June of the year of assessment. The Deputy Commissioner's qánúngo tests them, as regards the calculations of rent. The assessment, which is really nothing more than the drawing out of pattas for each holding of the area shown by the measurement papers, at the known rate of rent for each class of land, ought to be complete on or before the 1st August.

The pattas are then distributed and counterparts or "kabúliyats" taken. In September, the rains being nearly over, the char lands and uplands that will be cultivated for cold weather crops are known, and what uplands have been cultivated; and these also have to be measured on a supplementary proceeding. Pattas are not issued for these lands. The mauzadár does not

[3] The year runs from 1st April to 31st March.

measure up all land every year: the "basti" and "rúpit" lands being permanently cultivated, the measuring chain is only run round the exterior lots to ascertain that the total area is unchanged. The measurements may be checked by the district staff when in camp.

Ten-year and five-year leases or settlements may also be given on application, but they are only occasional, and naturally would be resorted to chiefly on permanently cultivated land.

It is obvious that a system of this kind, entirely dependent on the accuracy of the mauzadár's measurements, is open to many disadvantages, and there is much difficulty in the size of the area assigned to each mauzadár.

In some districts where júm cultivation is practised, revenue is levied on such lands in the shape of a tax on houses, or a poll-tax or a hoe-tax. In Kámrúp and Naugong a tax per house of the cultivating families is levied, in Lakhimpur a poll-tax, and in Naugong for some lands a hoe-tax, that is, a rate on each adult that uses a hoe in júm cultivation; the house-tax varies from Rs. 2 to Rs. 2-4; the hoe-tax is Re. 1-8; the poll-tax Rs. 3.

Revenue Business.

§ 4.—*Collection of revenue.*

The collection of the revenue naturally demands the first notice. The Sale Laws (Act XI of 1859, &c.) are not in force in Assam Proper, and arrears of revenue are collected from ordinary raiyats by what is known as the "báki-jai" system, which is said to be based on the old Assam Code and on certain Regulations.

The process is the mauzadár's remedy against the raiyats, for the mauzadár is himself responsible in the first instance. Within three months of the close of each year, the mauzadár sends in a list of defaulters to the district or sub-divisional officer. On this a notice to pay up is issued. If this fails, movable property is distrained and brought to head-quarters under notice of sale within fifteen days. If the sale proceeds fail to realise the sum due, no further steps are

taken: the estate of the defaulter is never sold[3]. If the manzadár has had to pay up any revenue he can sue the defaulting raiyat in the Civil Court. This system is not uniformly followed. In Sibságar, for instance, European planters were sued for arrears of rent; in Kámrúp the system was not followed at all.

It seems to be a question whether the báki-jai system can be applied against nisf-khirájdárs, chamúádárs, or holders of waste land grants, or whether these estates are liable to sale. Hitherto, however, these estates have never failed to pay. The báki-jai process is not put in force after the expiry of three months from the last day of the year of assessment.

§ 5.—*Survey.*

There is no survey law in force in Assam Proper at present.

§ 6.—*Land registration and land cases.*

Certain land registers are kept up, but the practice is not uniform; and as the whole matter has been the subject of discussion, and is likely soon to be reconsidered and placed on a legal basis, any further remarks in this place would be unprofitable.

There are no *partition* laws, nor is partition by Government agency known.

The Revenue authorities have much to do in disposing of what are called '*patta cases*,'[4] which result from the system of annual settlements already described. They refer to complaints of wrong measurement or classification of land, of *possession* (which is what the Revenue-officer is (properly speaking) alone concerned with in issuing his patta) being wrongly recorded, and disputes about boundaries.

Such cases are decided by the district officers on the 'revenue side,' or the parties may be referred to the Civil Court. It used to be the practice to entertain civil suits to contest the right of the

[3] Mr. Ward's Note on the Revenue System, § 284.
[4] *Id.*, § 89.

party who had gained the case in the revenue investigation, but this is not now allowed.

§ 7.—*Relinquishment and occupation.*

As already stated, any raiyat under Government may relinquish his land, or part of it, even if he has a five or ten-year lease. All that is needed is to submit an application on or before the 31st December of the year preceding that in which the relinquishment is to take effect.

The waste land rules of 1876 now in force refer to sales or leases for tea cultivation, &c., and there are no rules for the occupation of culturable waste; but when such land is available any raiyat has only to apply for it, and gets it at a rent of 8 anas a bíghá, for any term not exceeding ten years. When the land is occupied it is treated as ordinary raiyati land, and as soon as the lease expires the land is classified in the usual way and is assessed accordingly.

SECTION III.—THE HILL DISTRICTS.

§ 1.—*Garo Hills.*

These formerly were part of the Rangpur collectorate, but were "deregulationised" in 1822, and were afterwards formed into a separate district under the Act of 1869[5]. It has not been found necessary to make use of the Regulation of 1873 and draw an "inner line." A special Regulation (I of 1876) was passed for its government, but this only lasted till 1881. It has been renewed for a short time, but it is probable that, with the exception, perhaps, of some restrictions regarding their holding of land by Bengalis and others who might interfere with the Garo mountaineers and give rise to oppression and to consequent disputes, the district will be allowed

[5] For some years villages in the interior of the hills remained "independent," but after the occurrences described in the Statistical Account, Vol. II, page 157, &c. the whole of the tribes were reduced in 1873.

to come under the ordinary law applicable to Assam generally. The district is perfectly peaceable and well ordered, and traversed by excellent roads. Cultivation is mostly by 'júming' the hill sides, and the destruction of valuable forest covered by this process is very great.

§ 2.—*The Khási and Jaintiya Hills.*

In this district also there is no "inner line." It consists of three portions—

(1) British possessions,
(2) petty dependent chiefships, and
(3) the Jaintiya hills, forming part of the territories of the Jaintiya Rája, which became British territory in 1835.

The Khási chiefs had attacked and murdered (in 1829) some European British subjects who had taken up their residence at Nangklao, and this led to expeditions, which were brought to a close in 1833, the chiefs having all tendered their submission.

The British possessions in this district are said to cover an area of 2,160 square miles, while 4,490 miles are occupied by the Khási States.

Act VI of 1835 declares that the officers administering these hills are to be subject to the Sadr Court in civil and criminal matters, but nothing is said about revenue jurisdiction.

In 1871 the Act XXII of 1869 was extended to this territory, and by notification in July 1872, rules for administering civil and criminal justice and for police were issued[6].

The chiefs pay a portion of their revenue to the British Government; this is chiefly derived from minerals. Thus in the Bháwal State nearly all the income, Rs. 16,000 a year, is derived from "málikána" on lime.

The states are managed by chiefs with headmen of sections under them who are elected by the people. These are controlled politically, the British Government only interfering in case of

[6] *Calcutta Gazette*, 1872, p. 84.

disputes between the states, or in cases of misconduct of chiefs and headmen.

There is little in these hills to require notice in a Revenue Manual : the cultivation is chiefly rice[7]. Joint cultivation is also common. A house-tax is levied, which is collected by the headmen of the villages. But the income from leases of minerals (coal and limestone) is more considerable.

The "Jaintiya hills" form a sub-division, in charge of an Assistant Commissioner at Jowai.

§ 3.—*The Nágá Hills.*

Between this district and that last mentioned is a strip of hill territory—the North Cachár hills; but this belongs to the Cachár district, and will be more conveniently mentioned along with the rest of the district.

The Nágá hills district adjoins the territory of the independent Nágá tribes, which occupy the hills between Assam and Native Burma.

There are various tribes of Nágás, but interesting as a study of this district is, ethnologically and otherwise, there is nothing to be said of it in a Manual of this kind. The Government has commenced to preserve certain forests, but the administration generally is of a very simple character, suited to the capacity of rude tribes. The district itself was only constituted in 1867. Act XXII of 1869 was extended to it[8], and rules for civil and criminal justice and police were promulgated.

Section IV.—Sylhet.

This is one of the old Bengal districts of 1765. To it was added the plains portion of the Rája of Jaintiya's territory annexed

[7] See Statistical Account, Vol. II, page 228, for the process of cultivation, which is curious.

[8] *Calcutta Gazette*, 1871, page 1911.

in 1835. This was not permanently settled. We have therefore in Sylhet the following classes of estates :—

(1) Permanently settled.
(2) Revenue-free.
(3) Temporarily settled in Sylhet itself.
(4) Ditto in Jaintiya.
(5) Waste land grants.
(6) Redeemed estates.

§ 1.—*Permanently settled estates.*

The old district of Sylhet was under the Bengal Regulations, and part of it has been permanently settled. It was added to Assam in 1874, as already noticed, and the Act XII of 1874 enables the necessary arrangements to be made for the exercise of certain powers by the Chief Commissioner. A notification under the Scheduled Districts Act[9] has declared various Acts and Regulations to be in force, and this may set at rest many questions. But the notification does not affect the applicability of other Acts and Regulations that may be in force in Sylhet owing to its position as a Bengal district; it only puts an end to all doubt as regards the enactments which it specifies[10].

The permanently settled estates are governed by the appropriate Regulations; the temporary settlements are governed by Regulation VII of 1822; the sale laws are in force (Act XI of 1859 and Bengal Act VII of 1876).

In Sylhet, as in Chittagong, the decennial settlement (afterwards made permanent) only extended to lands actually measured in

[9] No. 1152, dated 3rd October 1879 (Government of India).

[10] Until 1874 Sylhet was like any other district in Bengal, but it then became a "scheduled district." If any enactments before applicable have been repealed since 1874, the repeal does not affect Sylhet, unless the repeal was by an Act of the Indian Legislature, or a Regulation under 33 Vic., Cap. 3. Certain enactments were, however, under the Local Laws Extent Acts declared not to apply to scheduled districts, so that in case any of these (and the case was so) were actually administered in Sylhet, it was necessary to declare their special applicability by notification ; this has been done.

1789 under Mr. Willes. Those lands, were, however, only a portion of the lands in the district. But the permanently settled estates were afterwards increased in number, as will presently appear.

§ 2.—*Ilám lands.*

In 1802, under the orders of the Board of Revenue, patwáris were instructed to report what lands there were which ought to be settled as not coming within Mr. Willes' measurements. The patwáris reported, whereon the Collector issued proclamations calling for claims to these lands: all the land not included in the old permanent settlement has thus come to be called "ilám" (proclaimed land). The patwáris' reports showed some 350,000 acres of land, but this was exclusive of areas of absolute waste which no one pretended to claim.

§ 3.—*Hálábadí lands.*

The authorities offered leases of this area of 350,000 acres; only about one-eighth was taken up and settled in 1804, the rest no one would take because the old settlement-holders insisted that it was theirs. The portions of the lands so settled were called hálábadí lands and were settled permanently, the rest were long left under discussion. At length it was determined that they were *not* part of the original estates, but were allowed special terms: they were to be settled for twenty years, on the close of which period they would, on the assessment being revised if necessary, be settled permanently.

§ 4.—*Nature of the permanently settled estates.*

There are therefore several kinds of permanently settled estates, distinguished by different names which it is hardly necessary to perpetuate. Thus we have "dahsána," the old estates; "dáími," estates permanently settled under Regulation III of 1828; "hálábadí," the estates just alluded to; and so forth.

The permanently settled estates are all small. In 1789 the Mughal system was found in force as elsewhere, but the collections

were managed by "chaudharis." In the neighbouring district of Maimansingh the chaudharis became zamíndárs; but here, more by a lucky chance than by anything else, they were not settled with, and consequently did not develop into zamíndár proprietors.

The original settlers on the estates are called "mirásdárs." There are few or no intermediate tenures.

There are some 50,437 permanently settled estates (and a very few in the Jaintiya territory which were permanently settled); 28,991 of these estates pay revenue exceeding one rupee, but less than 100 rupees, and more than 20,000 pay less than one rupee!

§ 5.—*Revenue-free holdings.*

There are many revenue-free estates called "debottar," "brahmottar" as usual, and for Muhammadan purposes "madad-máa'sh" "chirághi," &c., &c. There are more than 6,000 small estates of this kind.

§ 6.—*Temporarily settled estates in Sylhet.*

These consist of the ilám lands that were not permanently settled as above related. These are still under settlement. They are shown in the registers under various names, but the distinctions are practically of no importance. The ilám lands (not admitted to special terms as above mentioned) are settled according to rules published in the *Assam Gazette* in 1876. The principal rule is that waste land is not allowed to be included in the estate to an unlimited extent. Only such an extent as is equal to one-fifth of the cultivated area is included; the rest is held at disposal of Government under the "waste land rules;" the settlements are to be for twenty years; and estates the maximum revenue of which after revision is not more than one rupee may redeem it by paying twenty times the amount payable in the first year.

The "nánkár patwárgiri" lands, which are temporarily settled, are merely resumed lands which were supposed to be held as remuneration by village patwáris: the appointments were abolished in 1835 and the grants were resumed.

§ 7.—*Temporarily settled estates in Jaintiya.*

Under the Rája no rights in land were recognised. The whole was parcelled out into small holdings, for which the raiyats paid partly in kind and partly in labour. There have been various short settlements since annexation in 1835, and then a twenty years' settlement which expired in 1876. The holders of land are called mirásdárs, and they have had conceded to them by patta, a right which is practically proprietary and virtually the same as that given under temporary settlements in Sylhet[1].

The difficulty of managing all these little holdings was at first considerable, and various proposals were made from time to time regarding the tenure. At one time farmers were employed. Indeed, it is only at recent settlements that persistent efforts have been made to settle with the actual cultivators on a system which is very like a raiyatwárí system, and can be worked well, if only land is effectively registered and there are local establishments.

The individual holdings, I said, were practically proprietary, but the Deputy Commissioner's sanction is necessary to a transfer and this is specified in the pattas.

Relinquishment of holdings is not recognised. Ordinary waste land, suitable to cultivation and not for the grants, is not yet leased under any settled rules; but it is unnecessary to allude further to this, as it is probable that uniform rules for Cachár and Sylhet, as regards reclamation of waste, will be issued under the waste land rules of 1876.

[1] There is a curious case of an estate, or rather group of petty holdings, in Jaintiya which may be alluded to. Sylhet lime is famous, and the trade in it is large; it is obtained in the outer hills along the borders of the district. It seems that in former years a person named Inglis got a valuable grant of the right to work the limestone. Another person (Sweetlands) desiring to thwart him, immediately obtained a grant of all the waste plots in the Jaintiya parganas, his object being to have the command of the growth of *reeds* which were required to burn the lime. Inglis managed, however, to do without the reeds, or to get over the difficulty in some way, but there are still plots of ground over the parganas known as the "Sweetlands mahál."

§ 8.—*Waste land grants.*

Besides the ordinarily culturable waste just alluded to, there have been rules for grants to planters. The most numerous are the modern thirty years' leases, of which there are forty-three, covering an area of 35,607 acres.

§ 9.—*Redeemed estates.*

"Sylhet," says Mr. Ward, "is the only district where the land revenue assessed on estates is allowed to be redeemed." But the redemption only is allowed under the ilám land settlement rules, or generally in Sylhet (but not in Jaintiya) in estates paying not more than one rupee revenue. The proprietors do not, however, like to avail themselves of this power.

§ 10.—*Collection of revenue.*

In Sylhet, Act XI of 1859 and Bengal Act VII of 1868 are in force, but for a long time a curious custom existed side by side with the sale laws (and the Regulations which preceded them). Arrears of revenue were collected by a staff of patwáris and messengers under the orders of the Collector's názir, distraint of crops and sale of movable property being resorted to if necessary. This system was not abandoned till 1865. There has been much correspondence about the operation of the sale laws in Sylhet.[2] This I shall not enter upon; the enormous number of small estates, and the fact that the real proprietors of these may not be known, have no doubt created some difficulties, but there was nothing that called for any real change in the law.

Section V.—The Cachár District.

§ 1.—*Its history.*

The Cachár district was recovered in the Burmese war in 1826, but it was merely given back to its own Rája. He was assassin-

[2] See Mr. Ward's Note, § 301.

ated in 1830 and the district lapsed to the British Government. It has always been a Non-Regulation district; for the terms of Act VI of 1835, though they say nothing about removing the district from the operation of ordinary laws and regulations state that the officers administering the district shall be controlled by certain authorities acting under instructions from the Local Government, which appears to have been understood to mean that the officers were bound, not by the regular laws, but by instructions that they received.

§ 2.—*The Cachár hill division.*

The history of this district is very instructive. It consists of two portions—the hills of North Cachár, and the plain district. The hill portion is much less civilised than the plain country and is inhabited by wild tribes. It continued, indeed, a sub-division of Naugong till 1867, when the sub-division was abolished, and the territory became an integral part of the Cachár district.

In some respects it still forms a separate district, at least as regards its revenue, a house-tax being alone levied. In 1877, it is mentioned by Mr. Ward, a special Regulation was contemplated. This has been expanded into the Regulation II of 1880 already alluded to, which may be applied to all frontier tracts inhabited by backward uncivilised people: but it is not yet settled (1881) to what tracts it is to be applied, or what enactments are to be prevented from operating under it. The Regulation V of 1873 applies, and an "inner line" between the southern district and the wilder hills has been established.

§ 3.—*The district generally.*

The district of Cachár formed one of the last resting places of the Cachári tribe with their Rája. These people had once been a powerful governing race, coming from north of the Bráhmáputra river; but their dynasty had been overthrown both by the Kochs, and later by the Ahams[3], and therefore the people migrated south;

[3] Statistical Account of Assam, Vol. II, page 394.

they crossed the range of hills that form the southern barrier of the Bráhmáputra valley. Their capital was at Demapur, and afterwards at Maibong. While there, the Cachári Rája entered into relations with the neighbouring chiefs of Manipur, Jaintiya, and Tippera, and obtained in marriage the daughter of the Tippera Rája, with whom he acquired as dower the South Cachár territory between the Barak river and Chatarchura on the confines of Tippera. The capital of the Rája was then moved to Goábári, and his successors also constantly moved their capitals, till the last Rája, Gobin Chandar, settled at Hari Tikar, where he was assassinated in 1830.

§ 4.—*The inhabitants.*

The Rája appears to have encouraged settlers, and from time to time sent down his chiefs and great men for this purpose. Thus it happens that the hill portion of the territory is inhabited by Cacháris and the original tribes, Nágás, Kúkis, Lúshais, Dáns, or Parbattiás; and the south by the settlers, the overflowing Hindu and Muhammadan population of Sylhet, Tippera, &c.

§ 5.—*The Khel.*

The hill territories in the north were cultivated by "júm" and exhibit no features of special interest, but the Cachári Rájas organised a rather curious system of dealing with the settlers on the rich plains about the Bárak river, which has left its mark on the British revenue system. In a jungle-covered country of this kind it was but natural that the settlers should have come in companies for mutual society, help, and protection. Such companies were called "khel[4]." In the khel each man got as much land as he could cultivate, and the individual landholder is called (as in Sylhet) "mirásdár." In every khel the leading men got various titles and were rewarded with certain revenue-free holdings: thus the chau-

[4] Which is simply the Perso-Arabic term 'khel'—a company or tribe, a term introduced as it has been elsewhere.

dhari of the khel got two "háls "[5] of land free, the mazúmdar 1½, the lascar 1½, the barábuyia[6], and a majarbuyia 6 khears.

The free holdings were afterwards abolished and the titles became a source of revenue, as they were sold, a chaudhari's title fetching Rs. 100, and so on. Each khel had an agent or representative (mukhtár). The khels were grouped together in Ráj's, and the Ráj had also its representative at court, called "Ráj-mukhtár."

The khels were held jointly responsible for the revenue of every holding in their local limits; if a mirásdár failed to pay, the other members paid up and took his holding; if the khel failed to pay, the whole Ráj became responsible and took the land of the defaulting khel. No outsiders were admitted.

Originally the settlers had to supply service to the Rája; the inhabitants of a certain place had to supply betelnuts, others fire-wood, and so on; and the group that supplied the particular article was also designated "khel."

In the same way the revenues of the district were apportioned among the different members of the royal family, and the group of holdings the revenue of which was assigned was also called "khel;" thus there were the 'khel-ma' or bara-khel, the entire revenue of which went to the Rája; the Mahárâni's khel, one-fourth of which went to the Rája's chief wife and three-fourths to the Rája; the "shang jarai," or younger brother's khel; and so on. If the revenues of a tract were devoted to religious purposes, that was again "khel;" thus there were the "Bhisingsa khel," devoted to the support of the worship of Kálí; the Bishnughar khel, to that of Lakshmi Narain. These lands are still known, and now form "mauzas[7]."

§ 6.—*Early British administration.*

Passing over the earlier revenue arrangements, the first impor-

[5] The local Cachári land measure or hál is equal to 4·82 British acres; the khear is 2-5ths of an acre.

[6] I spell this word as it is in McWilliam's Report on Revenue Administration, 1871-72. I believe the word is bhaiyá, barabhaiyá, &c., "brother."

[7] McWilliam's Report, §§ 33, 34.

tant step was the survey of the district made under Lieutenant Thuillier in 1841. The country had then been cultivated chiefly along the banks of the principal rivers, and the survey only extended to the cultivation and so much of the adjacent waste as it was supposed could be reclaimed; the cultivated land was divided into "mauzas," and the mauzas into "dágs." The dágs were actually measured in the villages, but in the jungle the country was arbitrarily divided by lines (dág) which crossed at right angles, so that the lot included in the space between the intersections is called a dág. There were some tea grants which lay beyond the limits of the survey, and they were made into separate mauzas[8]. This plan led to much confusion when the jungle dágs began to be taken up and cultivated[9].

There have been subsequent surveys, cultivated waste plots having been added on to the survey of 1841 by native surveyors. There was a costly survey in 1864-65, but it was of little practical value. Some special surveys for the tea estates were carried out in 1870-73. As the settlements expired in 1879 and new settlements would become necessary, a cadastral survey was commenced in 1878, but there were difficulties in the way, and the matter is not yet settled.

It should be remembered that in the district the 'mauza' is a mere survey division of lands. It has no meaning such as attaches to the term in Upper India. The revenue mahál, not

[8] "McWilliam's Report," § 58.

[9] "Maps were prepared in which the cultivated lands were shown accurately and the jungle as a sheet of green. Lines were drawn horizontally and vertically, and in this sheet of green the divisions formed by four of these lines cutting one another were called dágs. When an application was made for the settlement of any of the land so marked out, an amín was sent out to find the dág on the map which represented the land applied for. As these dágs had never been laid down in the field and as there were generally no marks to help the amín in his search for them, it frequently happened that he made a mistake and reported as a certain dág a piece of land which actually was represented on the map by a dág having a different number." (Deputy Commissioner's Report, quoted by McWilliam, § 59.)

It then resulted that the holder of land was described in the papers as holding one lot, while in reality he was holding another.

the mauza, is the unit which represents the original grouping of land settlers, as I shall explain directly.

§ 7.—*Revenue system and procedure.*

The remarkable feature about the Cachár revenue is the survival of the joint responsibility. The old khel groups have in the course of years naturally been much altered by resignations of holdings, by additions, and so forth, but in some long-settled tracts the old khel group is still recognised. The land being held under the Assam principle of raiyati holdings under a "pattá" issued by Government, in Cachár each mahál is held under one pattá. The mahál is a tract held by a body of persons who are joint in interest, and this joint interest arises out of the old khel grouping. But the old khel organisation has been otherwise lost, since there is no system of mukhtárs and representatives of the community with the authorities as in old days. The number of co-sharers and signatories is often as large as 80 or 100. All the sharers or mirásdárs are jointly liable for the revenue of the mahál specified in the pattá; and this on the sole ground that either he or his fathers joined the group and took up a piece of land within its limits. Hindus and Muhammadans, low caste and high, are all found associated together in the mahál. The sharers in the mahál are at present left entirely to themselves as to the apportionment of the revenue responsibility over individual holdings, but in the present settlement it is probable that some sort of record of rights will be made: no such record has hitherto existed.

These joint holdings are quite peculiar to the districts of Cachár and Sylhet. The settlement conveys a right of occupancy and a right to a resettlement at the close of the term.

A good deal of discussion has taken place about the custom of "ghasáwat." The practice under the old Cachári Ráj I have already described; if a man failed to pay the revenue due on his holding, the other sharers in the khel took up the land absolutely. This was early modified (in 1833), and it was held that, on default, the estate might be given to any one, but that two years' grace

should be allowed during which the mirásdár might obtain re-entry on paying up the revenue. But this was found not to work and the ghasáwatdár was again declared irremovable. In 1857 the question was again raised, and a long correspondence ensued. It was then decided that on an estate falling into arrear, and an offer being made under the ghasáwat rule, the land should be put up to auction, and the title become absolute.

As there is joint responsibility, the right of pre-emption has been held to exist both among Hindus and Musalmáns. In fact pre-emption in this case is not a peculiar right derived from Muhammadan law, but is a very natural right, which exists in all joint communities in Upper India, for example; and is important to the joint body, as enabling them to keep together and resist the breaking up of their body by the intrusion of strangers.

§ 8.—*Revenue collection and law.*

In Cachár the Bengal sale laws are not in force. Arrears of revenue are collected in a manner similar to the báki-jai process in Assam Proper. The district is divided into three collecting circles or tahsils. Instalments of revenue fall due in the months of July, October, and January. On the first of the month succeeding that in which an instalment falls due, a notice or "dastak" is issued to the defaulter[10]. If this fails, a second is issued carrying with it attachment of movable property. This is generally sufficient; if not, the property is sold; and if that fails, a third process is issued against the estate itself, and the estate is sold by the Deputy Commissioner himself. The sale of estates in the last resort has been sanctioned by Government[1].

[10] As the maháls are joint, a very large number of these dastaks has sometimes to issue, so that *all sharers* may have notice; and this may give rise to the impression that the revenue is got in with difficulty, and only by a copious use of coercive processes: this is not the case.

[1] Despatch of Secretary of State, No. 30, dated 22nd January 1860. Bengal Government, to Board of Revenue, No. 2158, dated 22nd August 1860.

§ 9.—*Partition.*

Batwáras or partition cases are, as may be expected, common in Cachár, but are conducted on rules introduced in 1870, which do not appear to have the force of law.

§ 10.—*Rent cases.*

Rent cases were decided in the spirit of Act X of 1859, though that Act is not formally in force in Cachár; and when, in 1869, Bengal Act VIII repealed Act X, and made over rent cases to the Civil Courts, it became the custom in Cachár to hear rent cases in the Civil Court also. It is contended that this is done under instructions which can be issued for the guidance of the Courts under Act VI of 1835.

CHAPTER III.

REVENUE SYSTEM OF COORG.

SECTION I.—GENERAL HISTORY.

§ I.—*Early history.*

THIS little province has a considerable interest from the point of view of the historian of land tenures in India, because it is an instance of a conquest (not an immigration of an entire population) of a powerful tribe who divided the land into chiefs' estates, very much as the Nairs of Malabar did. This system has had its curious effect on the modern and surviving land tenures.

Colonel Wilks, in his history, says that the Coorgs[1] are descended from the conquering army of the Kadamba kings.

The Kadamba kingdom, in the north-west of Mysore, appears to have embraced all the countries in the vicinity. It was the Kadamba race that afterwards founded the Vijáyanagar sovereignty; and at the end of the 16th century Coorg was still ruled by its own princes, as mentioned by Ferishta; but by that time it seems that the whole country was divided into chiefships owning the suzerainty of Vijáyanagar.

The chiefs were called "Náyaka." As usual in Indian history, things went on in this way till one of the Náyakas becoming more powerful than the rest, established himself as the Rája over the whole. The Haleri family thus became dominant, but the other Coorgs were still the leading caste, and held their lands by a peculiar and superior tenure to that by which other landholders held.

After various fortunes[2], among which wars and slaughter were

[1] Coorg is an Anglicised form of Koḍagu; the Coorg people are Koḍagás.

[2] A long story about this—which for my present purposes is quite without interest—is to be found in Mr. Rice's Gazetteer of Mysore and Coorg (Bangalore Government Press, 1878), Vol. III, pages 100—194.

the most common, after being overrun by Haidar Ali and Típú Sultán's armies, Coorg became the ally of the East India Company. Things seemed to promise well up to about 1811, when a Rája, named Singa Rája, obtained the government, having originally been appointed the guardian of the minor heir of the former Rája. After a reign of untold wickedness and cruelty he died in 1820, and was succeeded by his son Víra Rája, who was, if possible, worse than his father. In 1833 these iniquities compelled the interference of the British Government; but all peaceful means having failed, it was at last necessary to send a force. The country was formally annexed by proclamation in May 1834.

§ 2.—*Present administration.*

At present Coorg is managed under a Chief Commissioner (who also is Resident for Mysore) and by a Superintendent. The latter has two Assistants. Coorg is a scheduled district under Act XIV of 1874, and is subject to the 33 Vic., Cap. 3.

The civil and criminal courts are constituted under Act XXV of 1868. But there is, I believe, an amending Regulation about to be passed.

The division of the country is into six taluqs, comprising twenty-four náds. The nád[3] consists of a group of grámas, or villages. But the village is not like an Indian village,—a local group of fields with an inhabited site in the midst—it consists of a number of detached farms or "vargas" with houses on them.

Each taluq is in charge of a "Súbahdár," and each nád has a headman called "parpattagár."

SECTION II.—LAND TENURES.

§ 3.—*Early tenures.*

Just as in Malabar, where we have noticed a traditional division of land between the priestly class and the rulers, it is a tradi-

[3] In Yelusavira and part of Nanjarájpatna the "nád" is called "hobli." There also lands are held by hereditary patels.

tion that Coorg was divided between the Kodagas and their hereditary priesthood, the Amma Kodagas. After the accession of the Haleri Rájas, the leading classes still continued to hold land on a more favourable tenure than others.

From the census of 1871 it would appear that about 15 per cent. only of the population were Coorgs and 76 per cent. Hindus, the small remainder being Muhammadans and others. To the privileged tenure of the Coorgs a few other classes have been from time to time admitted[4]; all the lower orders, and the original population, were probably treated as serfs by the Coorgs.

In Coorg itself, that is, inside the ghát barriers, all or nearly all the cultivation is wet or rice land, with the exception that coffee cultivation is practised on the slopes and waste lands above. Dry cultivation is found at the foot of the gháts, in Yelusavirasnime, &c.

§ 4.—*The Jamma tenure.*

This tenure, in which the reader will recognise the Sanskrit "janma"—birthright (as in the *janmi* tenure of Malabar,) is a proprietary tenure distinguished by paying only half the ordinary assessment or Rs. 5 per 100 bhattis of waste land[5].

Land held on this tenure cannot be sold, mortgaged, or alienated in any way without the sanction of Government. The reason of this is that the land cannot be held on this tenure except by the privileged classes. A sanad is granted for every holding, and a succession fee, "nazar kánike," is paid on receiving the sanad, in three yearly instalments, also a fee called "ghatti jamma" on taking possession. This is no doubt a relic of the feudal tenure of the old Náyakas, just as we see a succession fee paid in the chiefs' estates under the Ajmer Rájput system. The land is also held on condition of rendering service if required.

[4] A detailed account will be found in Rice's Gazetteer, Vol. III, page 233 *et seq.*

[5] The bhatti is a very small land measure, of which 100 are equal to 3 acres (or according to another notice 25 bhattis = ¾ acre. See Administration Report, 1872-73, page 19 *et seq.*

No remission of revenue can be claimed by holders of land on this tenure.

The land was all divided into farms or "vargas," and each jamma landholder held one or more "vargas" according to the size of the family group.

Previous to Típú's invasion, divisions of property and separation of families were rare; large 'house communions' existed, and it was not uncommon to find thirty-five or forty grown-up male relations, and many families consisting of upwards of 100 or even 120 members living under the same roof[6]. Of late years a certain amount of internal division of holdings as a matter of arrangement among the families takes place, but I am informed that actual partition is not officially recognised and is regarded as illegal and improper[7]. But still this can only be done if all consent; any one separating himself otherwise, is looked on as an outcast by the remainder, and can claim no share of the common stock, but must depend on his own resources.

The eldest member (Yejman) of the chief family is the head of the house, and holds the sanad and the property is registered in his name.

The vargas always include "báne," that is, a portion of forest on the hills which gives firewood, bamboos, branches for burning to manure the rice fields, and so forth, and some low barren land on which the cattle grazed, called "barike."

In former days the jamma lands were cultivated by aid of slaves. This was not recognised by the British Government, and the slaves soon found that no one could interfere with them if they left, and went to cultivate coffee or other lands, where profitable wages were offered.

This was the source of much difficulty, since the jamma owners had no means of cultivating their lands and could not let or alienate

[6] Gazetteer, Vol. III, p. 329. It would seem that if a part of a 'varga' was broken up, it could only be held on the common or ságu tenure.

[7] It is said that the Rájas encouraged division, because it caused more land to be aken up, and also discouraged the practice of polyandry.

them. It was ultimately determined that a portion of the holding might be sublet on the "vara" plan (metayer, or paying half produce); this tenancy has to be offered to certain classes in order so as not to alter the tenure more than is unavoidable.

§ 5.—*Ságu tenure.*

The ordinary tenure of the country is the "ságu;" it is an occupant's raiyati tenure, with no condition of service, and it pays Rs. 10 per hundred bhattas. Remission of revenue is allowed for land that could not be cultivated[8]. Partition of jointly held ságu land is not objected to. The holder of ságu land receives a sagávali chitu, or lease from Government signed by the Súbahdár.

Certain raiyati lands were in the Rája's time allowed a light assessment for certain services performed, and these are called "umbali" lands. A somewhat different system of tenure long prevailed in the Yelusavirashime country at the foot of the ghats. Here the village patels managed the revenue, each village being farmed to them. But this proved oppressive and inconvenient, and in 1801 the Rája ordered the lands in the *taluq to* be measured just the same as the land within the Coorg barriers; consequently the holdings became raiyatwár, and a "beríz" (beríj), or account of the rates assessed on each field, was made out, and is maintained to this day. In the taluq the original inhabitants hold chiefly on this tenure, but immigrants from the neighbouring districts are looked upon as tenants of the former, on a "wáram" tenure, which is in fact the familiar *metayer.*

§ 6.—*Báne lands.*

To every holding of ságu land, just as in the jamma tenure the holder acquires a strip of "báne" land,—that is, woodland on the slopes above the valley where his rice cultivation is, to yield

[8] There were formerly two classes of ságu tenure, which paid at different rates. This is still kept up, but transfers from one class to another do not now take place. It is not necessary to go into details on the subject.

him grazing, firewood, and above all bamboos, branches and herbage which he burns in the rice fields to give ash-manure to the soil[9]. In the jamma tenure, as the báne is included in the sanad, it is a part of the property. In the case of ságu holdings the use of it at any rate, and of all its products, except sandalwood, belongs to the holder of the lease. The báne of jamma holdings may be used for growing coffee (*i.e.*, on the old or local method, without clearing the forest) free of assessment. In ságu bánes only 10 acres may be cultivated with coffee.

The cultivated fields lie along the level of the valleys, the báne lands attached to the holdings being on the slopes on either side.

There is no dry cultivation assessed in Coorg itself, but in the taluq at the foot of the ghâts such land (dependent on rainfall) is assessed.

§ 7.—*Forest cultivation.*

"Kumri" cultivation was practised in the high forests of the ghâts, and though prohibited now, will probably be again allowed to a limited extent under proper conditions.

Cardamom cultivation, by protection of the seedlings which

[9] The Superintendent has kindly sent me a memorandum on báne lands. The term properly means land for pasturage attached to every holding or varga of cultivation (which was always in Coorg wet or rice cultivation) whether on the jamma or the ságu tenure. It answers to the "kurow" of the taluqs outside the barrier, and in some respects to the "káns" of Kanara and the "nagar" of the Mysore country. As long as the land attached to the holding was used for pasture and for supplying manure, no question would naturally arise as to whether the soil was the property of the landholder; but of late years persons have begun to cultivate coffee on the báne, which is obviously a new departure altogether, and even to sell the báne land. It seems to me that in reality the báne ought to be looked on as an appendage to the holding, the woods and surface products (except sandalwood) being at the entire disposal of the landholder, and that he may cultivate coffee by the ordinary plan, which does not cause the clearing of the jungle, but that he has no right to put the báne to any other use, still less to alienate it, unless along with the cultivation, in virtue of which it was originally held. This, however, is only an opinion. I am not aware that the status of the báne has been authoritatively settled.

spring up spontaneously when small clearings are made in the ever-green forest, is also practised.

§ 8.—*Royal farms or Panniyas.*

As a curious relic of the old quasi-feudal institutions of Rájas and Chiefs in Coorg, I should mention that the Rája retained various farms or royal estates in various parts, the produce of which went entirely to him. In some cases they were cultivated by metayer tenants, but ordinarily by a large body of slaves. The farms were exceedingly well-cared for and highly cultivated[10].

The slave question gave rise to some difficulty on the annexation of the province, but it was ultimately settled. The farms themselves were divided into the usual "vargas" and were disposed of like any other land held in ságu tenure.

§ 9.—*Coffee land tenure.*

There was beside the ghát forest, and the báne lands wanted for cultivated holdings, a very large area of waste. Much of this was suited to the cultivation of coffee. Indeed a good deal of the báne land has been cultivated with coffee without destroying the trees. Where this waste is forest land (for coffee cultivation) it is applied for under "waste land rules." Where it is ordinary measured land that happens to be available, it is (whether taken up for dry or for wet cultivation) held on the ordinary ságu tenure, but with a certain graduated scale of assessment, to encourage the cultivator and help him over the initial expense of clearing and establishing fields. When waste was taken up for coffee cultivation it was formerly held revenue-free, but the produce was liable to an export duty (hálat) of 4 anas per maund of 28 lbs., or one rupee per cwt. of clean coffee. In October 1863 this was abolished and a uniform assessment of from one to two Rupees per acre[1] for the whole area was introduced from 1st May 1864.

[10] Gazetteer, Vol. III, p. 319.

[1] For the first four years assessment is not levied, then from 5 to 12 years Re. 1, and after that Rs. 2 (Administration Report, 1872-73, § 32).

§ 10.—*Jodi lands.*

Certain lands are held by grant of the sale on a fixed revenue called jodi. In other words, the land is not absolutely revenue-free, but on favourable terms or half assessment. Such lands are held by patels in Yelusavirashime (resembling the "watan" of Western India) and by religious institutions all over Coorg. The tenure closely resembles the jamma tenure, since it pays the same rate (Rs. 5 per 100 bhattis). It cannot be sublet, and if left uncultivated may be given by the District Officers to any raiyat on a ságu tenure, in which case, however, one-half of the assessment is paid over to the institution.

§ 11.—*Sacred groves.*

Throughout the country certain groves called Devarakadu and held sacred by the people have been exempted from assessment or being liable to grant as waste lands, on condition that they are kept up as sacred groves. Of late, however, there has been a tendency among the more advanced and less superstitious headmen to cultivate coffee in these groves; this is argued to be an infringement of the purpose of the groves and of the conditions under which they are held revenue-free. There is a correspondence going on about this subject at the time I am writing.

Section III.—Revenue Administration.

§ 1.—*Survey and Settlement.*

The settlement system is virtually permanent. A survey has only been introduced in order to deal with waste land and coffee grants. No survey of the raiyats' holdings has been made, as it is not required, but a topographical survey was made. The whole of the land had been permanently assessed in 1866 by one of the Rájas, and the "shist" or account of this assessment has been maintained.

The jamma tenure is obviously a grant under sanad, and the assessment, at half the ságu rate on wet cultivation, is therefore absolute.

There has been no absolute declaration that the ságu assessment will never be raised, but at present the rates of the old shist accounts are maintained.

§ 2.—*Taxes on land.*

Besides the revenue, all rice lands pay dhúli-batta, and there is a house tax; and there formerly was a tax levied to cover the State expenses of a festival (called huttari) at the beginning of the monsoon. This is abolished.

The dhúli-batta is curious: it indicates the "dust of the threshing-floor"—the refuse paddy which was *accepted as a voluntary offering* by the first Haleri chief, when warily assuming the dominion over Coorg. Of course in due time it became a regular tax, and no refuse paddy. In 1868-69 this was commuted into a money payment.

A plough tax is also levied to pay for the cost of education. It is levied both on jamma and ságu lands, being 4 anas per plough on jamma and 3 anas on ságu holdings.

§ 3.—*Revenue procedure.*

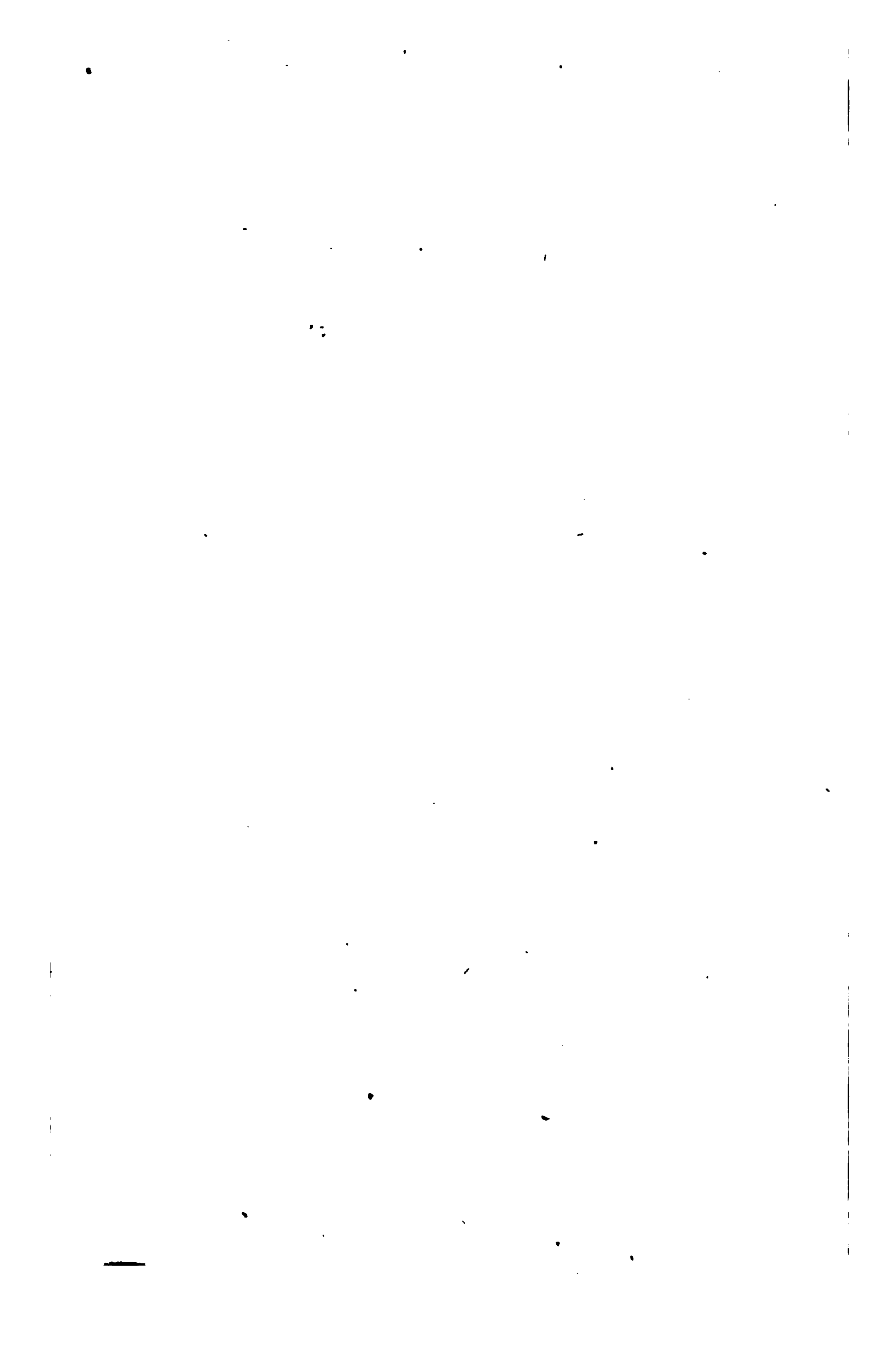
The revenue procedure is guided by Regulation III of 1880. This is chiefly concerned with detailed provisions regarding the recovery of arrears[2] by distraint and sale of movable property, or by attachment and management of land and by sale of land.

It provides that all the Government revenue may be recovered in the same way. That Civil Courts have no jurisdiction in any question as to the rate of land revenue, or amount of assessment, but redress may be had in the Civil Court by persons deeming themselves aggrieved by any proceedings under the Regulation, such suit being brought within six months from the time at which the cause of action arose.

[2] Revenue is in arrear when any 'kist' or instalment is not paid on the date fixed.

I understand that the old revenue practice laid down in 1834 is still followed; that the Súbahdárs and Parpattagárs have to inspect the lands and look after the cultivation, and in December to come to head-quarters and assist in the preparation of a "jamabandi," or roll showing the revenue to be paid by all the raiyats, and they make the collections according to the kists or instalments fixed.

THE END.



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